Supreme Court, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Consolidated Nos. 75-62, 75-66, 75-278, 75-306

RUSSELL L. RUNYON, *et ux*, *Petitioners*,

v.

MICHAEL C. McCRARY, etc., et al.

FAIRFAX-BREWSTER SCHOOL, INC., *Petitioner*,

v.

COLIN M. GONZALES, etc., et al.

SOUTHERN INDEPENDENT SCHOOL ASSOCIATION, *Petitioner*,

v.

MICHAEL C. McCRARY, etc., et al.

MICHAEL C. McCRARY, etc., et al., *Petitioners*,

v.

RUSSELL L. RUNYON, et al.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI CASE NO. 75-62 FILED JULY 10, 1975
PETITION FOR CERTIORARI CASE NO. 75-66 FILED JULY 11, 1975
PETITION FOR CERTIORARI CASE NO. 75-278 FILED AUGUST 22, 1975
PETITION FOR CERTIORARI CASE NO. 75-306 FILED AUGUST 27, 1975
CERTIORARI AS TO ALL CASES GRANTED NOVEMBER 11, 1975

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CASE NOS. 73-2348, 73-2349, 73-2350, 73-2351, 73-2352

Michael C. McCrary, infant by
Curtis L. McCrary and Sandra McCrary
and Colin M. Gonzales, infant by
Raymond Gonzales and Margaret R. Gonzales,

Appellees,

vs.

Russell L. Runyon,
Katheryne E. Runyon,

Defendants,

Southern Independent School
Association,

Appellant.

[Other titles omitted in printing]

RELEVANT DOCKET ENTRIES

1974		
Jan. 22		Order continuing case for argument en banc to the April 1974 Session filed
Jan. 28		Motion of the counsel for American Private Education, the National Association of Independent Schools, and the Southern Association of Independent Schools for leave to file brief
Apr. 2		Cause argued, en banc before Haynsworth, Chief Judge, Winter, Craven, Boitner, Russell, Field and Widener, Circuit Judges, and submitted.

1973

Apr. 11 Opinion (CJB) filed. BMB, WLW, JBC concur in parts I, II, III, and IV(a) and dissent in IV(b). DRB, HAP, HEW concur in part IV(C) and would reverse the district court on all points.

Apr. 11 Judgment of district court affirmed in part and reversed in part, judgment filed.

Apr. 20 Appellant's petition for rehearing filed.

May 1 Intervenor's opposition to motion for allowance of attorney's fees on appeal, filed

May 4 Motion of Russell Runyon in opposition for allowance of attorneys' fees' filed

May 4 Motion of the Fairfax-Brewster School, Inc. in opposition to the motion for allowance of attorney's fees' on appeal filed.

May 29 Order making modifications to the opinion of this court filed on April 11, 1973 and denying petitions for rehearing and denying motions for attorneys' fees filed.

June 26 Order granting recall and staying judgment pending application for writ of certiorari filed. pd.

June 27 Order granting recall and staying judgment pending application for writ of certiorari filed. pd.

Nov. 19 Certified copy of order of the Supreme Court granting certiorari November 11, 1973 filed.

Nov. 20 Certified record in two volumes and exhibits in one envelope transmitted to the Clerk of the Supreme Court.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 73-2348

Richard C. McCrary, infant by
Curtis L. McCrary and Sandra McCrary
and Colin M. Gonzales, infant by
Raymond Gonzales and Margaret R.
Gonzales,

Appellees,

versus

Ronald L. Runyon,
Katheryne E. Runyon

Defendants,

Southern Independent School
Association,

Appellant

No. 73-2349

Richard C. McCrary, infant by
Curtis L. McCrary and Sandra McCrary
and Colin M. Gonzales, infant by
Raymond Gonzales and Margaret R.
Gonzales,

Appellees,

versus

Ronald L. Runyon,
Katheryne E. Runyon,

Appellants,

Southern Independent School
Association,

Defendant.

No. 73-2350

Richard C. McCrary, infant by
Curtis L. McCrary and Sandra McCrary

Plaintiffs,

Colin M. Gonzales, infant by
Raymond Gonzales and Margaret R.
Gonzales

Appellees,

versus

Ronald L. Runyon
Katheryne E. Runyon

Southern Independent School
Association,

Appellees.

No. 73-2351

Colin M. Gonzales, infant by
his parents, Raymond Gonzales
and Margaret R. Gonzales,

Appellees,

versus

Fairfax-Brewster School, Inc.,

Appellant.

No. 73-2352

Colin M. Gonzales, infant by
his parents, Raymond Gonzales and
Margaret R. Gonzales,

Appellants,

versus

Fairfax-Brewster School, Inc.,

Appellee.

Argued April 2, 1974 Decided April 15, 1975

Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., District Judge

Before Haynsworth, Chief Judge, and Winter, Craven, Butzner Russell, Field and Widener, Circuit Judges, sitting en banc.

George S. Leonard and Louis Koutoulakos for Appellants in Nos. 73-2348, 73-2349 and 73-2350; Andrew A. Lipscomb (Gary R. Sheehan and Tolbert, Lewis and Fitzgerald on brief) for Appellants/cross-Appellees in Nos. 73-2351 and 73-2352; (Thomas J. Schwab on brief for Amici Curiae in Nos. 73-2348, 73-2349 and 73-2351; Allison W. Brown, Jr., (Robert M. Alexander and Roderick V. O. Boggs on brief) for Appellees/cross-Appellants in Nos. 73-2348, 73-2349, 73-2350, 73-2351 and 73-2352.

HAYNSWORTH, Chief Judge:

The issue in this case is whether 42 U.S.C.A. §1981[1] prohibits private schools from denying admission to qualified black applicants solely on the basis of their race.

This appeal is a consolidation of two suits initiated by parents of black children who claim that they were denied admission to the appellant schools because of their race.

The Southern Independent School Association intervened in these actions, alleging that it is an association representing over 300 private, non-profit schools in the South, some of which concededly are racially exclusive in their admission policies. The position of the intervenor is simply that racial discrimination by private schools is not prohibited by §1981, and, in any event, cannot be constitutionally prohibited.

As found by the trial judge, in early May 1969, the parents of Colin Gonzales contacted the Fairfax-Brewster School, a private school located in Fairfax County, Virginia, about enrolling their son in the school's summer day camp program, and continuing into the first grade in the fall. The Gonzales' learned of Fairfax-Brewster through a mass mailing addressed to "Resident," an advertisement in the Yellow Pages in the telephone book, and from a friend whose son attended the Summer Camp.

[1]"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

Thereafter, the Gonzales visited the school and, being pleased with what they saw, completed an application for their son. They also furnished, as required, a medical certificate and application fee. On May 16, 1969, the medical certificate and application fee were returned, accompanied by a form letter stating that the school was "unable to accommodate the applicaton." No further explanation was given.

Mr. Gonzales called the school and spoke with someone who identified himself as Captain Reiss. In response to Mr. Gonzales' inquiry as to why his son's application was rejected, he was told that the school was not integrated.

Captain Reiss is the Chairman of the Board of Fairfax-Brewster School. His son, Robert, is the Administrative Director, and his daughter-in-law Olga is the Registra

Both Captain Reiss and his son deny any such conversation. They testified that Colin, age 5-1/2, was rejected because they felt that the kindergarten he had previously attended gave Colin insufficient preparation for the first grade at Fairfax-Brewster. Because they found Colin unqualified for the first grade, the Reisses concluded that "there was no point" in allowing him to enter the summer camp only to have to "yank him out" at the beginning of the academic year.

Subsequent to their son's rejection from Fairfax-Brewster, the Gonzales telephoned Bobbe's School, and were told that only members of the Caucasian race were accepted.

In August 1972, Mrs. McCrary called Bobbe's School about enrolling her two year old son, Michael, in the nursery school. She asked whether the school was integrated and accepted blacks, and was told it did not. She did not file a formal application with Bobbe's.

Mr. Gates, the superintendent of Bobbe's, testified that he never received a call from either the Gonzales or Mrs. McCrary. He testified that the school does not discriminate on the basis of race, although he said that no black child had ever applied.

The district court found the testimony of the Reiss "unbelievable," and concluded that Colin had been rejected from Fairfax-Brewster because of his race. He further found that both the Gonzales and Mrs. McCrary had called Bobbe's and had been told that the school would not accept blacks. It held that, "[i]t is of no moment that no formal application was filed. It would be ridiculous to require this of the plaintiffs after they had effectively been told it was useless."

Accordingly, the court concluded that the appellant schools practiced racial discrimination in their admissions policies.

On the authority of *Jones v. Alfred H. Mayer Co.* 392 U.S. 409 (1968), *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969) and *Tillman v. Wheaton-Haven Recreation Assn.*, 410 U.S. 431 (1973), it held that §1981 prohibits racial discrimination in private contractual arrangements, even when there is no state involvement. Therefore, it held that the schools were in violation of §1981 prohibits racial discrimination in private contractual arrangements, even where there is no state involvement. Therefore, it held that the schools were in violation of § 1981 in their admissions policies, and permanently enjoined defendants and intervenors from discriminating against blacks in enrollment in their schools. In addition, it awarded damages for embarrassment, humiliation and mental anguish to Colin, Michael and Michael's parents, and attorney's fees against Fairfax–Brewster and Bobbe's. *Gonzales v. Fairfax-Brewster School, Inc.*, 363 F. Supp. 1200 (E.D. Va. 1973).

Defendants and intervenor appeal. We affirm the injunction and the award of damages, but reverse the award of attorney's fees.

II.

Initially, the appellants contest the district court's findings of facts, urging that the district court was clearly erroneous in concluding that Fairfax-Brewster and Bobbe's practice racial discrimination.

There was conflicting testimony as to whether the Gonzales had been told that Fairfax-Brewster was not integrated and whether both the McCrarys and Gonzales were told that Bobbe's was not integrated. Resolution of this conflict depended upon the district court's evaluation of the credibility of the witnesses. We may not reverse a trier of fact, who had the advantage of hearing the testimony, on a question of credibility.

In addition, the testimony of the black parents was corroborated and supported by the testimony of two other witnesses. Mrs. Bryant testified that she had telephoned Fairfax-Brewster and Bobbe's to inquire about their admissions policies and was told that the schools were not integrated. Mr. Brooks, Mrs. McCrary's supervisor at her job, testified that a Mr. Gates, at Bobbe's, told him, over the telephone, that Bobbe's did not accept blacks.

The trial judge also thought that the Reim's story that Colin was rejected on educational rather than racial grounds was undercut by the fact that Fairfax-Brewster allows applicants to take an entrance examination when previous scholastic preparation is inadequate. Colin was not given this opportunity.

In short, there is ample evidence in the record to support the trial judge's factual determinations, and we are

unable to say that, viewing the record as a whole, he was clearly erroneous in concluding that Colin and Michael were denied admission to the schools because of their race.

III.

The substantive legal questions, which have been the subject of varied comment in the literature, [2] we think were correctly resolved by the district court. Section 1981 is a limitation upon private discrimination, and its enforcement in the context of this case is not a deprivation of any right of free association or of privacy of the defendants, of the intervenor, or of their pupils or patrons.

A.

It may once have been supposed that §1981 served only the limited office of removing legal disabilities which state statutes imposed upon black people. It, of course, did cancel state statutes which imposed restrictions upon the right of blacks to contract, but the Supreme Court has clearly held that it did much more than that. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968); *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229; *Tillman v. Wheaton-Haven Recreational Assn.*, 410

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[2] See Note, Federal Power to Regulate Private Discrimination: The Revival of the Enforcement Clauses of the Reconstruction Era Amendments, 74 Colum. L. Rev. 449 (1974); Note Desegregation of Private Schools: Section 1981 as an Alternative to State Action, 62 Geo. L.J. 1363 (1974); Note, Segregation Academies and State Action, 82 Yale L.J. 1436 (1973); Comment, Jones v. Alfred H. Mayer Co. Extended to Private Education: Gonzales v. Fairfax-Brewster School, Inc., 122 U. Pa. L. Rev. 471 (1973); Recent Decisions, 45 Miss. L.J. 246 (1974); Recent Decisions, 8 U. Rich. L. Rev. 203 (1974); Recent Cases, 42 U. Cin. L. Rev. 767 (1973); Recent Cases, 26 Vand. L. Rev. 1307 (1973).

U.S. 431 (1973).

In *Jones v. Mayer*, the Court was concerned with the right to purchase real estate. There a real estate developer had refused to sell a residence in a "white area" to the black plaintiff. Analyzing the text and legislative history of §1 of the Civil Rights Act of 1866,[5] the court held that §1982 applied to purely private activity and provided a judicial remedy. As so construed, it was held that enactment of §1982 was a valid exercise of the power of Congress under the enforcement clause of the Thirteenth Amendment, which gave Congress power to "pass all laws necessary and proper for abolishing all badges and incidents of slavery."[6] The Court concluded that, unlike the Fourteenth Amendment, the Thirteenth reached private conduct in which no state action was involved.

As an intellectual exercise, the historical reading and interpretation of the majority in *Jones v. Mayer* may be debatable. *See* VI History of the Supreme Court of the United States; Fairman — Reconstruction and Reunion, 1207 et seq. That reading and interpretation was followed in *Sullivan v. Little Hunting Park* and in *Tillman v. Wheaton-Haven*, however, and, for us, is firmly established.

Jones v. Mayer, of course, dealt with §1982, assuring the right to purchase property. We deal with §1981, assuring the right to contract, but both sections derive from §1 of the Civil Rights Act of 1866. Both are subject to the same analysis and must be interpreted in the same light. In *Tillman v. Wheaton-Haven*, the claim of the guest and the host rested upon §1981. The Supreme Court expressly noticed the relation between §1981 and

[5] 14 Stats. 27

[6] Civil Rights Cases, 109 U.S. 3, 20 (1883).

§1982, their common derivation from §1 of the Civil Rights Act of 1866 and the necessity of according them similar interpretation.

It is contended here, however, that §1981 confers no right of action unless the contract denied the aggrieved person was open to all white people. It seems obvious that the relationship between the school on the one hand and a pupil and his parents on the other hand is a contractual one and that admission is a part of the process of forming such a contractual arrangement. It is also true that admission to the school is not open to all white people because there are academic, financial and other restrictions upon admission. Within the qualified class, however, there is no other limitation upon the admission of white applicants up to the school's capacity.

We may not read §1981 so restrictively as the schools would have us to do it. The school may not refuse with impunity to accept an otherwise qualified black applicant simply because it declines to admit unqualified white applicants. The section is violated by the school as long as the basis of exclusion is racial, for it is then clear that the black applicant is denied a contractual right which would have been granted to him if he had been white.

What we have said should not be read to call into question the right of the school to insist upon an even-handed requirement of academic and other racially neutral qualifications. Indeed, the right of the school to be selective on those bases is unquestioned here. All that is contended and all that we hold is that §1981 prohibits the rejection of a black applicant when his qualifications meet all other requirements and race is the only basis for his rejection.

8.

As applied here, we see no violation of any constitutionally protected rights of free association and of privacy.

There is a protected right of free association. As stated by the Supreme Court in *N.A.A.C.P. v. Alabama*, 357 U. S. 449 (1958), "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of * * * freedom of speech." *Id.* at 460. The constitutional protection, however, is essentially an attribute of First Amendment rights and would not ordinarily justify exclusion of others sharing the same beliefs and ideas. Here, at least, there is no showing that discontinuance of their discriminatory admission practices would inhibit in any way the teaching in these schools of any ideas or dogma.

Nothing in §1981 impedes parents in their exercise of a choice of a private school presenting ideas or having educational methods or practices which are not available in the public schools. They may do the same thing to avoid ideas and influences in the public schools which they regard as unhealthy. *See Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Among private schools, they are free to prefer one with a certain curriculum or dogma over others, but the school, while it may exclude applicants on the basis of neutral principles, may not exclude on the basis of race.

There is also a right of privacy. Its constitutional basis may be elusive, but it has clearly been held to exist. *Roe v. Wade*, 410 U.S. 113 (1973); *Griswold v. Connecticut*, 381 U.S. 479 (1965).

Though certain intimate and private affairs of men and women are protected from governmental interference, the the schoolhouse is far from the realm of protection. The

right is appropriately recognized in certain instances when only a few people are involved in activity unintended for the public view. In such instances, it is more than likely or inevitable that there is some plan or purpose of exclusiveness other than race. When relations between husband and wife are involved, their purpose to exclude all the rest of the world has no racial connotations. When a school holds itself open to the public, however, or even to those applicants meeting established qualifications, there is no perceived privacy of the sort that has been given constitutional protection.

Indeed, §1981 does not purport to reach all private associations. It reaches only those which evidence "no plan or purpose of exclusiveness" other than race. *Sullivan v. Little Hunting Park*, supra. Private associations having non-racial criteria for the selection of members may apply their criteria, even if it results in a disproportionate impact upon the members of one race. It is only when blacks are excluded because they are black, or denied a right to contract which would be granted were they white, that §1981 is violated.

Nor do we read anything in *Norwood v. Harrison*, 413 U.S. 455 (1973), as holding that rights of association or rights of privacy, or both combined, prevent the application of §1981 here. In *Norwood* the Supreme Court struck down a Mississippi statute giving free textbooks to all students, including those attending private, segregated schools. Mississippi contended that its failure to furnish free textbooks to students in private, segregated schools would violate the equal protection clause and would undermine the right of the parents to send their children to private schools. In answer, the Court observed that because "the Constitution may compel tolerance of private discrimination in some circumstances does not

made that a negative state support for such discrimination." 411 U.S. at 461.

The observation in *Norwood* is far from a holding that segregation in a private school is constitutionally protected. Earlier in the opinion the Court had observed that no such question was presented. 411 U.S. at 457. Nor do we rest with the question whether segregation in private schools is itself a violation of the Thirteenth or Fourteenth Amendment. We deal with a specific statute passed to implementation of the Thirteenth Amendment. *See Katzenbach v. Morgan*, 384 U.S. 641 (1966); Note, Federal Power to Regulate Private Discrimination: The Revival of the Enforcement Clauses of the Reconstruction Era Amendments, 78 Colum. L. Rev. 449 (1978).

Finally, the Court in *Norwood* recognized the threat of §1981 and §1982 when it noted that private decisions [illegible] have never been accorded affirmative constitutional protections. And even some private discrimination is subject to special remedial legislation in certain circumstances under §2 of the Thirteenth Amendment." 411 U.S. at 470. We deal with such circumstances. In short, we construe read *Norwood* as a holding that segregation in private schools such as these is constitutionally protected or so to be beyond the reach of §1981.

C.

Some schools may be so private as to have a discernible rule of exclusivity which is inoffensive to §1981. Should siblings continue to employ suits for their children, they may exclude the rest of the world, for the rule of exclusivity has the more distantly related and the unrelated regardless of race. The schools here are not private in that sense, and there is no discernible neutral rule of exclusivity which would bar these plaintiffs. The schools

are private only in the sense that they are managed by private persons and they are not direct recipients of public funds. Their actual and potential constituency, however, is more public than private. They appeal to the parents of all children in the area who can meet their academic and other admission requirements. This is clearly demonstrated in the case by the public advertisements. Within that constituency, they may not exclude a black applicant, solely because of his race, while accepting white applicants with comparable qualifications.

IV

The district court awarded damages for embarrassment, humiliation and mental anguish suffered plus an award of attorney's fees. The schools complain of both.

A.

It is not helpful to look to state decisions in personal injury tort cases to attach damages for such injuries are denied.[9] That damages are recoverable for violations of §§1981 and 1982 is established by *Sullivan v. Little Hunting Park*, 396 U.S. 229, 240, as which we are told, "both federal and state rules on damages may be utilized, whichever better serves the policies expressed in the federal statute."

Section 1981 doctrine was intended to give to the former slave access to opportunities for material betterment of themselves, but it was also intended to restore

[9]*See the recent decision of the Virginia Supreme Court in Norfolk & Portsmouth* [illegible] (Va. December 8, 1978), it is arguable that the plaintiffs here could recover damages in a state tort action for emotional distress. For an earlier discussion of Virginia's requirement of a resulting physical injury in distress case, *see Hughes v. Moore*, 214 Va. 37, 197 S.E. 2d 214 (1973).

the stigma which accompanied the disabilities under which they formerly had labored. The plain command of the statutes is that those formerly enslaved henceforth shall be treated as having all of the rights and dignity of other people dwelling with them in a land of freedom. A denial of those statutory rights is treatment of the victim as being subject to those earlier disabilities. It is an affront, of which embarrassment and humiliation are natural consequences. If the statute is to be enforced fairly, if injuries suffered directly because of its violation are to be fairly compensated, damages for embarrassment and humiliation must be recoverable in a case such as this.

B.

The award of attorney's fees stands in a different posture. It is one thing to award damages for the invasion of a legal right and quite another to impose all of the litigation costs on the defendant. Unlike damages, attorney's fees have been granted only in narrowly defined circumstances.

We have recognized the propriety of an award of fees when a party maintained his position in bad faith, displaying "obstinate obduracy." *Brewer v. School Board of City of Norfolk*, 4 Cir., 456 F. 2d 943, 948-52. The district court, however, made no finding of "obstinate obduracy," [6] and we can see no basis for such a finding. Since this suit involves a novel application of a recently revived statute, the litigation of the issues cannot be equated with the recalcitrance we found in *Brewer*. Although at trial the parties recounted different versions of the facts and the court accepted the plaintiffs' story,

[6] In refusing punitive damages, the district court found that the defendants had not "acted recklessly or wilfully in disregard of clear existing law." 363 F. Supp at 1205 n.5.

the finding suggests no bad faith or perjury. Faults in perception or memory often account for differing trial testimony, but that has not yet been thought a sufficient ground to shift the expense of litigation.

Attorney's fees, of course, are available where Congress has expressly authorized them. A conspicuous example is Title II of the 1964 Civil Rights Act. [7] *Newman v. Pittie Park Enterprises, Inc.*, 390 U.S. 400 (1968). Section 1981 never contained a provision for fees, and although the Emergency School Aid Act of 1972 expressly allows fees in suits to desegregate public or federally aided secondary or elementary schools, [8] plaintiffs have made no showing of federal aid to, or state action by, the defendants.

In the absence of expressed congressional direction, we are presented with the question whether to adopt a "private attorney general" theory. Although application of that theory may be proper in some actions based on the 1866 and 1870 Civil Rights Act, it would be inappropriate in this case. In considering an award of fees in an action based on the older civil rights statutes, we look to more recent congressional determinations that a policy is so important or public enforcement mechanisms are so ineffective that attorney's fees are necessary to promote private enforcement. Mere provision of a private cause of action is not sufficient. A statutory grant of attorney's fees in suits covering the same subject matter, however, would be a strong indication of such a congressional determination.

[7] 42 U.S.C. §2000a–3(b)

[8] 20 U.S.C. §1617 (allowing fees against a "local educational agency, a State . . . or the United States" for a violation of that Act, Title VI of the 1964 Civil Rights Act or the Fourteenth Amendment). *See* Bradley v. School Board of the City of Richmond, 416 U.S. 696 (1974); Northcross v. Board of Education of the Memphis City Schools, 412 U.S. 427 (1973).

In *Lee v. Southern Home Sites Corp.*, 5 Cir., 444 F. 2d 143, Judge Wisdom looked to the enactment of the Fair Housing Law of 1968, which contained a fees section, 42 U.S.C. §3612(c), in deciding that fees were available to a plaintiff seeking to redress racial discrimination in the sale of houses under §1982. In 1968 Congress had acted, pursuant to its powers under the Thirteenth Amendment, [9] to prohibit discrimination in the sale of private housing. [10] In Lees' §1982 action, he proceeded against precisely the discrimination that Congress had sought to curb by providing for an award of reasonable fees for his attorney to a prevailing plaintiff in a private enforcement action.

Employment discrimination suits provide another example of judicial allowance of fees under the older, more general civil rights statutes. We have recognized that a plaintiff under Title VII might recover attorney fees. [11] Reaching beyond Title VII, courts have allowed fees in actions brought under the older civil rights statutes to eliminate similar employment discrimination. *Fowler v. Schwarzwalder*, 8 Cir., 498 F. 2d 143, (§§1981, 1983); *Harper v. Mayor and City Council of Baltimore*, D. Md., 359 F. Supp. 1187, 1218-19, *modified on other grounds sub nom., Harper v. Kloster*, 4 Cir., 486 F. 2d 1134

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[9] United States v. Hunter, 4 Cir., 459 F. 2d 205, 214.

[10] After December 31, 1968 the Act applied to all dwellings, 42 U.S.C. §3603 (a)(2), except those enumerated in §3603(b). In *Lee* it was not clear whether the Act applied since the transactions occurred before December 31, 1968, and evidence on the applicability of §3603 (a)(1), which covered that time period, was not recounted in the opinion.

[11] 42 U.S.C. § 2000e–5(k); Lea v. Cone Mills Corp., 4 Cir., 438 F. 2d 86; Robinson v. Lorillard Corp., 4 Cir., 444 F. 2d 791

(§§1981, 1983); *Cooper v. Allen*, 5 Cir., 467 F. 2d 836 (§1981). In *Cooper* the plaintiff based his suit on racial discrimination in hiring by a municipal golf course, but he failed to go through the conciliation procedures of Title VII and could not proceed under the statute. Nevertheless, Congress had authorized fees in the similar Title VII action to encourage private elimination of such discrimination. Where plaintiffs advance precisely the same congressional goal by the use of a more general statute, they may be entitled to attorney's fees. That is not to say, however, that once fees are awarded in any §1981 or §1982 case, they should always be granted in actions based on those statutes. The focus of the inquiry should be whether the plaintiffs advanced a goal the attainment of which Congress sought to further by providing for the recovery by a prevailing plaintiff of his attorney's fees.

In this case the plaintiffs have not acted to foster a goal that Congress deemed so urgent. The Emergency School Aid Act spoke only to desegregation actions against public and federally aided schools. Unlike the Federal Housing Law or Titles II and VII of the 1964 Civil Rights Act, the statute does not aim to eliminate discrimination from a facet of private American life. The limitation in that statute to public schools is not merely a technical or procedural restriction, but goes rather to the substance of the congressional goal. Without some congressional direction, even by analogy, we will not

award attorney's fees, but will adhere to the usual rule that prevailing plaintiffs may not recover their attorney's fees,[12] for we find none of the recognized exceptions applicable.[13]

AFFIRMED IN PART .
REVERSED IN PART.

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[12] Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 717 (1967).

[13] See Hall v. Cole, 412 U.S. 1 (1973); Mills v. Electric Auto-Lite Co., 396 U.S. 375 (1970).

BUTZNER, Circuit Judge, concurring in part and dissenting in part:

I concur in Parts I, II, III, and IV-A of the opinion. I dissent from Part IV-B, which reverses the district court's allowance of attorney's fees. I would adhere to our practice of sustaining a district judge who, for sound reasons, has allowed attorneys' fees. His discretion can be justified in this case on two grounds: the appellees acted as private attorneys general, and, alternatively, the appellants' defense was tainted by obdurate obstinacy.

By prosecuting this single case, the appellees invalidated the racially exclusive admission practices of over three hundred schools represented by the Southern Independent School Association, as well as the practices of Fairfax-Brewster and Bobbe Schools. In so doing, they vindicated congressional policy by abolishing an aspect of racial discrimination prohibited by the Civil Rights Act of 1866 [42 U.S.C. §1981]. This type of suit is encompassed by the private attorney general doctrine, which is applicable to suits brought under the Civil Rights Acts of 1866, 1871, and 1964. *See, e.g.*, Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1968); Cooper v. Allen, 467 F. 2d 836 (5th Cir. 1972); Lee v. Southern Home Sites Corp., 444 F 2d 143 (5th Cir. 1971); Sims v. Amos, 340 F. Supp. 691 (M.D. Ala., 3-judge court, *aff'd mem.*, 409 U.S. 942 (1972). Under this doctrine, the award is not dependent on proof of bad faith, for good or bad faith is irrelevant. Brandenburger v. Thompson, 494 F. 2d 885, 888 (9th Cir. 1974). Nor does the receipt of compensatory damages preclude an award of attorneys' fees, Knight v. Auciello, 453 F. 2d 852 (1st Cir. 1972), though, of course, a court may take damages into account when awarding a fee. *See* Lee v. Southern Home Sites Corp., 444 F. 2d at 147.

Judge Winter and Judge Craven concur in Parts I, II, III, and IV-A of the court's opinion. They join Judge Butzner in dissenting from Part IV-B.

• • •

RUSSELL, FIELD, and WIDENER, Circuit Judges, concurring and *dissenting*:

I

We concur in the result reached in part IV-B of the opinion of the court. We would not, of course, reach the question of attorney's fees if our view on the merits prevailed. Otherwise, we respectfully dissent.

II

In its opening paragraph, the majority opinion correctly states the legal issue [1] in this case. We add, however, that the issue is presented to this court as one of first instance in any federal court at this or higher level. [2] We are bound by no definitive Supreme Court decision.

The majority regard *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), followed in *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969), and *Tillman v. Wheaton-Haven Recreational Association*, 410 U.S. 431 (1973), as

[1] We are not convinced that the district court's findings of fact are not clearly erroneous. Such lawsuits, however, being largely unavailing, see *United States v. Johnston*, 268 US 220, 227 (1925), we address ourselves to the important legal issue here presented.

[2] In *Grier v. Specialized Skills, Inc.*, 326 F. Supp. 856 (W.D. N.C. 1971), the United States District Court for the Western District of North Carolina held the refusal of a barber school to admit black students constituted a violation of §1981. On the other hand, in *Riley v. Adirondack Southern School for Girls*, 368 F. Supp. 392 (C.D. Fla. 1974), the court refused to apply §1981 to a racially segregated independent school. The decision is base at least in part on factual determinations. See also *Segregation in Private Schools*, 122 U. of Penna. L. Rev. 471, at 475 (1973).

Alternatively, attorneys' fees are justified when defendants display obdurate obstinacy. *See* Brewer v. School Board of City of Norfolk, 456 F. 2d 943 (4th Cir. 1972) (dictum). The district court's findings, amply supported by the record, demonstrate that the officers of the schools did not truthfully recount under oath the facts of the case. Such bad faith in the conduct of litigation is a pernicious form of obstinacy that can no more be tolerated than out-of-court bad faith. *Cf.* Hall v. Cole, 412 U.S. 1, 15 (1973). This behavior should not be excused simply because this case involves a novel factual situation. *Cf.* Lea v. Cone Mills Corp., 438 F. 2d 86, 88 (4th Cir. 1971); Miller v. Amusement Enterprises, Inc., 426 F. 2d 534, 536 (5th Cir. 1970).

Finally, I believe that the enactment of 20 U.S.C. §1617 directing the allowance of fees in public school desegregation cases does not create an inference that Congress intended to withdraw from district courts "the inherent equitable power"* of a chancellor to allow fees in actions against private schools when the facts otherwise justify the award because the plaintiffs acted as private attorneys general or the defendants displayed obdurate obstinacy. Other courts confronted with analogous problems have not restricted the allowance of fees in suits brought under the earlier Civil Rights Acts to instances where Congress has subsequently authorized fees in related legislation. *See, e.g.*, Brandenburger v. Thompson, 494 F. 2d 885 (9th Cir. 1974)(welfare benefits); Sims v. Amos, 340 F. Supp. 691 (M.D. Ala., three-judge court), *aff'd mem.* 409 U.S. 942 (1972)(reapportionment). Indeed, the drastic limitation on the allowance of fees in civil rights cases suggested by the majority appears to be without precedent.

**See* Hall v. Cole, 412 U. S. 1, 5 (1973).

being controlling precedents. We do not so regard those decisions.

We believe that the majority has been unduly impressed by the historical relationship between §§1981 and 1982 and has failed to discern the difference between the right to purchase real estate and the right to attend an independent school inferred from the right to "make and enforce contracts." The purchase of real estate, with its attending perquisites, is a commercial transaction pure and simple, and many other contracts are likewise purely commercial. On the other hand, the relationship of teacher and student is one of status, which is related to the contract concept in the same way that the status of husband and wife may be said to grow out of a contract of marriage. The contract aspect of the situation is minor and incidental and serves no purpose other than as a door opener in the present case to bring independent schools within the scope of §1981. The right to make and enforce contracts does not imply a right to coerce an unwilling co-contractor into making any and every variety of contract.

The majority opinion also fails to recognize *Moose Lodge v. Irvis*, 407 U.S. 163 (1972), and *Gilmore v. City of Montgomery*, 417 U.S. 556 (1974). True, those cases do not involve §1981 or §1982, but involve the problem of State action under the Fourteenth Amendment. However, they do show that answers to apparently the same type of technical questions in this field may vary according to the facts of each particular situation.

Legal problems arising out of a purpose to readjust interracial relationships fall into four categories: (1) those arising under the Fourteenth Amendment; (2) those created by the Civil Rights Acts of the 1960's; (3) those resulting from conditions imposed by the federal government upon benefits bestowed such as aids to education; and (4) those

arising from the enactment of the post Civil War Civil Rights Act of 1866 and the several acts of the 1870's, now found in 42 USCA §§1981, et seq. Legal problems involving the issues regarding the newly enfranchised slaves were acute until the *Civil Rights Cases*, 109 U.S. 3 (1883). Thereafter, such legal problems became stereotyped until the landmark decision in 1954 of *Brown v. Board of Education*, 347 U.S. 294 (1954). That case introduced the first of the above four categories, which is still paramount. Racially discriminatory action may be struck down under the Fourteenth Amendment provided State action is involved. In the 1960's, the Congress forbade racially discriminatory practices under the Civil Rights Acts of 1964 and 1968. Those acts did not touch private action in some fields. To cover this hiatus, the post Civil War Civil Rights Acts were resurrected. The leading case is *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), which was decided after the passage of the Civil Rights Act of 1964.

After the Thirteenth Amendment abolished slavery in 1865, various States passed Black Codes designed to keep those who were newly enfranchised as second class citizens if citizens at all. Although such former slaves were now free, the objective was to keep them from exercising the legal rights usually associated with free citizenship such as the ownership of property and the making of contracts. See *Private Discrimination*, 74 Col. L.Rev. 450, 452 (1974). To counteract this movement, the Fourteenth and Fifteenth Amendments were eventually adopted. More immediately, however, the Civil Rights Act of 1866 was passed. It was based upon §2, the enforcement section, of the Thirteenth Amendment which, unlike the Fourteenth Amendment, did not require State action. What is now 42 USCA §§1981 and 1982 were section one of

the Act of 1866. And there were misgivings as to the constitutionality of the Act. Simply, they were that the Thirteenth Amendment abolished slavery, and conduct, such as that prohibited by the 1866 Civil Rights Act, did not constitute the reestablishment of slavery in the strictest sense of the word. Because of the constitutional doubt just mentioned, the provisions of the Civil Rights Act of 1866 were reenacted, practically intact, in various statutes passed during the 1870's, after the effective date of the Fourteenth Amendment. Section One of the Act of 1866 was reenacted in 1870 and is now represented by 42 USCA §§1981 and 1982. Only the 1866, and not the 1870, Act is here pertinent because State action is clearly not involved in our case. The Acts of 1866 and 1870 were dormant for so many years that in civil law countries a desuetude would have occurred. [3] Not until after the passage of the Civil Rights Act of 1964 was the 1866 Act reactivated. The 1964 Act made no attempt to prevent racial discrimination in the admission policies of independent schools. If the Thirteenth Amendment authorized Congress to forbid independent schools to use race as an admissions criterion in 1866, it likewise did so in 1964. Whatever the intent of the 1866 Congress may have been, it must be that the 1964 Congress did not intend to restrict the admissions policies of independent schools.

The application of 42 USCA §1981 to this case may be approached either as a matter of interpretation or as

[3]Our dissent is not buttressed on this premise. See *Jones*, p. 427.

a matter of constitutionality: i.e., (1) what does §1981 forbid? (2) is §1981 constitutionally valid? Here, these two questions merge together. Section 1981, as any other statute, should be construed, in the light of constitutional limitations, to uphold its validity. See *Graham v. Richardson*, 403 U.S. 365, 382 (1971). [4]

While dissenting, we wish to make it clear that we do not necessarily express approval of the alleged restrictive admissions policies of the appellants. What is involved here is a collision between competing social interests, any of which, standing alone, would be regarded with favor.

On the one hand, our society has an interest in the upward mobility of all of its citizens, unhampered by invidious distinctions. A corollary of this is an interest in educational opportunities.

This interest in educational opportunity as a means of upward mobility is confronted by social interests in the true independence of private educational institutions, and in the right of voluntary association and non-association. Although the backbone of our educational system must of necessity be found in our public schools, in a diverse society such as ours the burgeoning value of educational institutions which are autonomous and free from control by the federal and state governments is generally and legally accepted. Compare *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Society has an interest in preserving the true independence of such institutions.

[4]Our result would be the same whether we construe §1981 as being in conflict with the constitutional right of free association, or construe it consistent therewith. Of course a statute fails if in conflict with the Constitution. *The Federalist*, Nos. 10, 78, Hamilton; No. 44, Madison. In this connection, footnote 3 of the district court's opinion is curious (363 F. Supp. 1200 at 1204). That note states that although §1981 forbids discrimination by whites against non-whites, it does not forbid discrimination by non-whites against whites or other non-whites. Such a construction would make the section clearly unconstitutional. Simply put, the opinion of the

The other social interest which supports the position of appellants is the interest in free association. It is conceded that, as a general matter, enforced association is foreign to our institutions. Mr. Justice Douglas, in his dissenting [5] opinion in *Moose* p. 179, the proposition thus:

> "The associational rights which our system honors permit all white, all black, all brown, and all yellow clubs to be formed. They also permit all Catholic, all Jewish, or all agnostic clubs to be established. Government may not tell a man or woman who his or her associates must be. The individual can be as selective as he desires."

Even were we to assume, for argument, the majority holding that the persuasiveness of the right of free association depends, in part at least, upon the size of the unit, both of the schools here involved are small. They are not huge and impersonal. The district court's opinion, 363 F.Supp. 1200, 1201, 1202, indicates a maximum enrollment at Fairfax-Brewster School of 236 and at Bobbe's School an average of 200. In schools of that size, intimacy of

district court is that all races, so far as § 1981 is concerned, may operate racially segregated schools except the white race. Either all may do so (as we contend), or none may. Such a restrictive construction of § 1981 also goes against the plain language of the statute. The section provides: "*All* persons . . . shall have the *same* right . . . to make and enforce contracts . . . as is enjoyed by white citizens, and shall be *subject to like* [disabilities of various kinds] . . ." (emphasis added). To give non-whites greater rights than whites would run contra to the statute, the same as giving them less rights would violate it.

[5] The force of Mr. Justice Douglas's statement is not reduced by the fact that it was part of a dissenting opinion; in fact, it is accentuated. The issue in the case was whether the fact that a private club dispensed liquor by virtue of a State license made its action State action. The majority thought not; Mr. Justice Douglas thought so. Thus, the quoted language was opposed to the main thrust of the opinion.

personal association is still important, and the right of free association certainly should apply, if it does in any case, to units of such numbers. How great a size, if any, might destroy the constitutional protection is a question not now before us.[6]

It is one of the missions of law to balance conflicting social interests so as to give the maximum of protection to each. [7] Which interest will prevail will depend therefore upon special considerations in each context in which the conflict is presented. A good illustration of this point is to be found in a comment upon the district court's decision in the instant cases in *Segregation in Private Schools,* 122 U. Penna. L. Rev. 471, at 478, 479 (1973). It is there stated that "a balancing of Constitutional interests is necessary to produce a proper construction of section 1981." The author continues:

> "Our discussion to this point suggests where the balance might be struck without seriously impairing either right. The right to contract protected in section 1981 should be limited to contracts found in secondary, as contrasted with primary relationships. The former [sic, latter] are 'basically relationships between friends,' characterized by 'intimate association.' Secondary relationships, by contrast, are 'impersonal, highly formalized relations between people,' for example, the relationship between buyer and seller. . .

[6] The numbers involved in *NAACP v. Alabama* and *Gilmore* would seem to indicate that great numbers alone do not necessarily furnish sufficient cause to lose the constitutional protection of freedom of association.

[7] See Julius Stone, *Social Dimensions of Law and Justice* (Stanford University Press, 1966), Chapter 4, pages 164, et seq, citing Roscoe Pound and other legal scholars. Somewhat this same idea is suggested in 122 U. Penna. L.Rev. 471 at 478, 479 (1973), and 74 Col. L.Rev. 449, 468, 469 (1974).

under this approach, discrimination would be allowed in primary relationships for any reason whatever, including racial bias, . . ."

The article suggests that such a differentiation reconciles the results in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), and *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972). If this approach is used, it seems to us that a secondary school as found here involves a primary relationship and thus is not within the scope of §1981.

So far as the balancing of conflicting interests is concerned, the difference between the right to own property, under §1982, and the alleged right to attend an independent school under §1981 becomes apparent. The word "right" is ambiguous. See *Private Discrimination*, 74 Col. L. Rev. 449, at 468, 469 (1974). It may mean an immunity from legal disability to own property or make a contract. In Hohfeldian terms, this would be a privilege. Or it may mean a power to compel another to convey property or enter into contractual relations notwithstanding a refusal to do so solely because of race. It is not necessary to assume that the word right means the same in all contexts. If on the one hand we consider society's interest in upward mobility and the removal of invidious discrimination against disadvantaged groups, it would seem clear, as pointed out in the Columbia Law Review citation, supra, that a mere freedom from legal disability to own property would be of little value to a black person if prospective vendors could refuse to sell to him because of his race. There might be no other source from which he could purchase property. Thus, the Supreme Court's decision in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968), can be readily understood and accepted, even were we not under obligation to accept and follow it.

The same basis of necessity is not available to support the desire of blacks to attend an all white independent school. The overwhelming portion of the burden of

educating our people is borne by public schools, which by law are non-segregated. If all schools, nursery through college, are considered, in 1972, 86.6% attended public schools and only 13.4% attended non-public schools. If only secondary schools, which is what are involved in this case, be considered, statistics show that in 1972 92.4% of students attended public schools and only 7.6% attended non-public schools. (American Almanac for 1974, page 108). These statistics are the more significant when it is considered that more independent schools, including all or practically all church affiliated institutions, do not use race as a basis for admission. Thus, so far as acceptance as a first class citizen is dependent upon educational opportunity, the impact of schools such as those operated by the two appellants is diminutive. If it be asserted that the exclusionary policies of schools such as these appellants have invidious implications, it must be remembered that most, if not all, of the high prestige private schools, are not racially segregated. In fact, many of them make an affirmative effort to obtain black students. See *Segregated Academies and State Action*, 82 Yale L. Jour. 1436, at 1444 (1973). Indeed, at the time of the district court's decision in this case, appellee Colin Gonzales had been accepted by and was attending the Congressional School, a non-public school. 363 F. Supp. 1202. Insofar as society's interests in educational opportunity for all of its citizens and the removal of invidious discrimination are weighed against society's interests in true independence of non-public educational institutions and freedom of association, especially in connection with close, intimate relationships, we believe that, unlike the right to purchase property involved in *Jones v. Alfred H. Mayer Co.*, the balance is in favor of construing the right to make and enforce contracts protected by §1981 as being a freedom from legal disability and not as being extended to prohibiting a non-

public institution from operating on a racially segregated basis.

As we have previously indicated, we do not find it necessary to express an opinion on the constitutional validity of 42 U.S.C. §1981, but we do feel compelled to say that the result reached by the majority is an unconstitutional and invalid application of the statute. Our conclusion is supported by the opinion of the court in *Gilmore v. City of Montgomery*, 417 U.S. 556 (1974), which adopts, in the opinion of the court, the language we have previously quoted from the dissenting opinion of Mr. Justice Douglas in *Moose Lodge* to the effect that people may band together in their association with whomsoever they please. And those cases specifically refer to the forbidden and highly suspect classifications of race and religion. Nothing in history or the precedents contains any suggestion that the same reasoning applied to a religious school in *Pierce*, to a social club in *Moose Lodge*, and indeed (albeit in slightly different context) to private schools in *Gilmore*, should not apply here. And we think the majority takes too little account of *Norwood v. Harrison*, for in that case, in a discussion of the precise type of segregated private school involved here, the court unequivocally stated that the very bias here charged is neither invalid nor subject to sanction of law:

> "Such private bias is not barred by the Constitution, nor does it invoke any sanction of laws, but neither can it call on the Constitution for material aid from the State." 413 US 455, 469.

We would reverse the judgment of the district court on all points.

[Filed April 15, 1975]

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 73-2348

Michael C. McCrary, infant by Curtis L. McCrary and Sandra McCrary and Colin M. Gonzales, infant by Raymond Gonzales and Margaret R. Gonzales)

Appellees,

vs.

Russell L. Runyon, Katheryne E. Runyon,)

Defendants,

Southern Independent School Association,)

Appellant.

Appeal from the United States District Court for the Eastern District of Virginia.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Virginia, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed in part and reversed in part.

/s/ WILLIAM K. SLATE, II

CLERK

[Filed April 15, 1975]

JUDGMENT

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 73-2349

Michael C. McCrary, infant by)
Curtis L. McCrary and Sandra McCrary)
and Colin M. Gonzales, infant by)
Raymond Gonzales and Margaret R. Gonzales)

Appellees,

vs.

Russell L. Runyon, Katheryne E. Runyon,)

Appellants,

Southern Independent School Association,)

Defendant.

Appeal from the United States District Court for the Eastern District of Virginia.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Virginia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be and the same is hereby, affirmed in part and reversed in part.

/s/ WILLIAM K. SLATE, II

CLERK

[Filed April 15, 1975]

JUDGMENT

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 73-2350

Michael C. McCrary, infant by)
Curtis L. McCrary and Sandra McCrary,)

Plaintiffs,

Colin M. Gonzales, infant by)
Raymond Gonzales and)
Margaret R. Gonzales,)

Appellants,

vs.

Russell L. Runyon)
Katheryne E. Runyon,)

Southern Independent School)
Association,)

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Virginia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed in part and reversed in part.

/s/ WILLIAM K. SLATE, II

CLERK

[Filed April 15, 1975]

JUDGMENT

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 73-2351

Colin M. Gonzales, infant by his parents, Raymond Gonzales and Margaret R. Gonzales,

Appellees,

vs.

Fairfax-Brewster School, Inc.,

Appellant.

Appeal from the United States District Court for the Eastern District of Virginia.

This cause came on to be heard on the record from the United States District Court for the Eastern District of Virginia, and was argued by counsel

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed in part and reversed in part.

/s/ WILLIAM K. SLATE, II

CLERK

[Filed April 15, 1975]

JUDGEMENT

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 73-2352

Colin M. Gonzales, infant by his parents, Raymond Gonzales and Margaret R. Gonzales,

Appellants,

vs.

Fairfax-Brewster School, Inc.,

Appellee.

Appeal from the United States District Court for the Eastern District of Virginia.

This Cause came on to be heard on the record from the United States District Court for the Eastern District of Virginia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed in part and reversed in part.

/s/ WILLIAM K. SLATE, II

CLERK

[Filed May 29, 1975]

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Nos. 73-2348
73-2349
73-2350

Michael C. McCrary, infant by Curtis L. McCrary and Sandra McCrary and Colin M. Gonzales, infant by Raymond Gonzales and Margaret R. Gonzales,

Appellees,

versus

Russell L. Runyon, Katheryne E. Runyon,

Defendants,

Southern Independent School Association,

Appellant.

Nos. 73-2351
73-2352

Colin M. Gonzales, infant by his parents, Raymond Gonzales and Margaret R. Gonzales,

Appellees,

versus

Fairfax-Brewster School, Inc.,

Appellant.

ORDER

Upon consideration of the petitions for rehearing filed on behalf of the appellants and the appellees,

IT IS ORDERED that Section IV-A of the opinion be amended, adding at the end thereof a paragraph reading:

> While allowing damages in favor of the McCrarys against Bobbe's School and in favor of Colin Gonzales because of his minority, the district court denied an award of damages to Mr. and Mrs. Gonzales since it concluded that their claim was foreclosed by the applicable statute of limitations. The statute applied was the first sentence of Virginia Code §8-24, applicable to actions for personal injuries. It is contended on appeal that the judge should have applied Virginia's five year statute, the second sentence of §8-24, applicable to actions not otherwise provided for in more specific statutes of limitations. While the action is brought under Section 1981, the damage claim is entirely referable to injured feelings and humiliation. We have held such claims asserted under the Reconstruction Acts to be governed by Virginia's two year statute. *Allen v. Gifford,* 4th Cir. 462 F. 2d 615; see *Almond v. Kent,* 4th Cir., 459 F. 2d 200. It is also contended that the five year statute for actions on a contract, Virginia Code §8-13, applies, but it is clear that no action on a contract is involved.

IT IS FURTHER ORDERED that the petitions for rehearing be and each of them hereby is denied.

Upon consideration of the motion for allowance of attorney's fees on appeal filed on behalf of the appellees,

IT IS ORDERED that the motion for allowance of attorney's fees be and hereby is denied.

In conformity with Alyeska Pipeline Service Company v. Wilderness Society, 43 U.S.L.W. 4561 (U.S. May 12, 1975), Judge Butzner withdraws that part of his dissent approving the district court's allowance of attorneys' fees on the basis of the private attorneys general theory. However, he retains the section which would affirm the allowance of fees because of the defendants' bad faith. *See* Alyeska Pipeline Service Company v. Wilderness Society, *supra* 43 U.S.L.W. at 4567, 4570 n. 46. Judge Winter and Judge Craven concur in this amendment of Judge Butzner's dissent.

Except as modified herein, each member of the court adheres to the position he took in the previously released opinions.

FOR THE COURT

/s/ Clement F. Haynsworth, Jr.
Chief Judge, Fourth Circuit

May 26, 1975

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 73-2351

[Filed June 25,1975]

Colin M. Gonzales, infant by his parents, Raymond Gonzales and Margaret R. Gonzales,

versus

Fairfax-Brewster School, Inc.,

Appellants,

No. 73-2352

Colin M. Gonzales, Infant by his parents, Raymond Gonzales and Margaret R. Gonzales

Appellants,

versus

Fairfax-Brewster School, Inc.,

Appellees.

Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert B. Bryan, Jr., District Judge.

Upon the motion of the appellant, by counsel and for cause shown,

IT IS ORDERED that the judgments in lieu of the mandates be, and same is hereby, recalled; that the Clerk of the United States District Court for the Eastern District of Virginia, at Alexandria, is directed to return to the Clerk of this Court the certified copy of the judgment in each case issued in lieu of the mandate and that the mandates be stayed pending application of the appellant

in the Supreme Court of the United States for a writ of certiorari to this Court, provided the application is filed within the time permitted by law.

For the Court – by Direction.

/s/ WILLIAM K. SLATE, II

CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 73-2348

[Filed June 24, 1975]

Michael C. McCrary, infant by
Curtis L. McCrary and Sandra McCrary
and Colin M. Gonzales, infant by
Raymond Gonzales and Margaret R.
Gonzales,

Appellees,

versus

Russell L. Runyon,
Katheryne E. Runyon,

Defendants,

Southern Independent School
Association,

Appellant.

No. 73-2349

Michael C. McCrary, infant by
Curtis L. McCrary and Sandra McCrary
and Colun M. Gonzales, infant by
Raymond Gonzales and Margaret R. Gonzales,

Appellees

versus

Russell L. Runyon,
Katheryne E. Runyon,

Appellants,

Southern Independent School
Association,

Defendant.

Appeals from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., District Judge.

Upon the motion of the appellant, by counsel and for good cause shown,

IT IS ORDERED that the judgment in lieu of the mandate be, and same is hereby, recalled; that the Clerk of the United States District Court for the Eastern District of Virginia, at Alexandria, is directed to return to the Clerk of this Court the certified copy of the judgment issued in lieu of the mandate and that the mandate be stayed pending application of the appellant in the Supreme Court of the United States for a writ of certiorari to this Court, provided the application is filed within the time permitted by law.

For the Court - by Direction.

/s/ WILLIAM K. SLATE, II
CLERK

[Filed May 6, 1975]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MICHAEL C. McCRARY., etc., et al
Plaintiff–Appellees

v.

RUSSELL L. RUNYON, et al
Defendant–Appellants

No. 73-2348
No. 73-2349
No. 73-2350
No. 73-2351
No. 73-2352

and

SOUTHERN INDEPENDENT SCHOOL ASSOCIATION
Intervenor

MOTION IN OPPOSITION FOR ALLOWANCE OF ATTORNEYS' FEES

Comes now the defendant-appellant, Russell L. Runyon, et al, d/b/a Bobbe's School, and moves this Honorable Court to deny the motion for allowance of attorneys' fees, and to further deny the petition for rehearing, filed on behalf of Gonzales, et al. It is submitted that as to these issues the trial court and the Court of Appeals were plainly right. It is further submitted that the petition for rehearing and for allowance of attorneys' fees were received by the undersigned counsel on May 2, 1975, inasmuch as he was out of his office on May 1, 1975, and therefore, he has insufficient time to prepare a brief by May 6, 1975.

Respectfully submitted

/s/

Louis Koutoulakos
2054 14th St. North
Arlington, Va. 22201
Attorney for Russell L. Runyon, et al, d/b/a Bobbe's School
Defendant–Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 1975, true copies of the foregoing and attached Motion in Opposition for Allowance of Attorneys' Fees were mailed to the following:

Allison W. Brown, Jr., Esq.
Suite 437-3000 Connecticut Ave.,N.W.
Washington, D.C. 20008

Robert M. Alexander, Esq.
2011 South Glebe Road
Arlington, Va. 22204

Andrew A. Lipscomb. Esq.
430 Washington Building
Washington, D. C. 20005

George S. Leonard, Esq.
1225 Connecticut Ave., N.W.
Washington, D. C. 20036

/s/

Louis Koutoulakos

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

COLIN M. GONZALES, infant,
by Raymond Gonzales and Margaret R. Gonzales)
his parents,)
6030 Vista Drive
Falls Church, Virginia 22041)

RAYMOND GONZALES and
MARGARET R. GONZALES,)

Plaintiffs,)

v.) **CIVIL ACTION NO. 494-72-A**

FAIRFAX-BREWSTER SCHOOL, INC.)
c/o Steuart A. Reiss
5860 Glen Forest Drive
Baileys Crossroads, Virginia 22041)

Defendant.)

RELEVANT DOCKET ENTRIES

1972

Dec. 19 Complaint, filed

1973

Feb. 13 Answer, filed
May 15 Motion to Dismiss, filed by deft.
May 15 Pre-trial. . . Case consolidated with C/A 495-72-A
July 11 Order amending defendant's Answer, ent. and filed
July 16, 17 Trial Proceedings: J. Bryan. This cause came on for trial by the Court. Interrogatories. . .

	admitted into evid. in both cases. Pltfs. adduced rebuttal evidence and rests. Deft's. adduced sur rebuttal evidence and rests. Closing arguments made. The Court took the cases under advisement
July 20	Defendant's Memorandum, filed
July 27	Memorandum Opinion and order granting judgment in favor of pltfs., entered-filed
July 30	Order, entered 7/16/73 dismissing claims of Raymond Gonzales & Margaret R. Gonzales for monetary damages & denying without prejudice deft's motion to dismiss, entered-filed

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[Filed December 19, 1972]

[Title omitted in printing]

COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTION AND DAMAGES

1. Jurisdiction of this Court is invoked Pursuant to 28 U.S.C. Section 1337, 1343(4), 2201 and 2202. This action is brought pursuant to 42 U.S.C. Section 1981 and 42 U.S.C. Section 2000a to secure for plaintiffs, who are Negroes, the same right to make and enforce contracts as is enjoyed by white citizens, and to enforce the right of plaintiffs to the full and equal enjoyment of places of public accommodation without discrimination on the ground of race or color.

2. This is an action for a declaratory judgment as to plaintiffs' rights, an injunction and monetary damages, based on the maintenance by the defendant of a custom, policy and practice of discriminating on the basis of race or color with respect to the admission of children to educational and recreational facilities and programs operated by defendant.

3. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all similarly situated Negroes. Negro children as a class are barred or may be barred, because of their race or color, from admission to educational and recreational facilities and programs operated by defendant. The class represented by plaintiffs is so numerous that joinder of all members is impracticable; there are questions of law or fact common to the class; the claims of plaintiffs are typical of the claims of the class; and plaintiffs will fairly and adequately protect the interests of the class. Defendant has acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

4. Plaintiff Colin M. Gonzales, infant, brings this action through his parents, Raymond Gonzales and Margaret R. Gonzales, who also sue individually. Said plaintiffs are residents of Fairfax County, Virginia; they are members of the Negro or non-Caucasian race.

5. a. Defendant Fairfax-Brewster School, Inc. operates an establishment located in Fairfax County, Virginia, which provides nursery school, elmentary school, and summer camp facilities and programs for children.

b. In the course of operating said programs, defendant furnishes food for those who attend, which is consumed on defendant's premises. A substantial portion of said food originates outside of the State of Virginia and moves in interstate commerce.

c. Supplies and equipment used in the construction of defendant's facilities, and used in the course of its operations, have originated outside of Virginia and have moved in interstate commerce.

6. a. On or about June 15, 1969, plaintiff Colin M. Gonzales' parents, Raymond Gonzales and Margaret R. Gonzales, spoke to an agent or employee of defendant about enrolling Colin in defendant's elementary school program, and after learning that he met the qualifications for admission, Colin's parents informed said agent or employee that they would like to enroll him. When said agent or employee was told that Colin was of the Negro race, Colin's parents were informed that Colin was unacceptable for enrollment because of his race.

b. At all times since June 15, 1969, plaintiff Colin M. Gonzales has been prevented from attending Fairfax-Brewster School, because of defendant's custom, policy and practice of denying admission to children of the Negro or non-Caucasian race.

7. Defendant's failure and refusal to admit Negro or non-Caucasian children to educational and recreational facilities and programs operated by it is wilful, intentional, malicious, and in reckless disregard of the rights of plaintiffs guaranteed by the Civil Rights Act of 1866 (42 U.S.C. Section 1981) and the Civil Rights Act of 1964 (42 U.S.C. Section 2000a). Defendant's custom, policy and practice

of discriminating against persons of the Negro or non-Caucasian race deprives such persons of the same right to make and enforce contracts as is enjoyed by white citizens, and violates the right of such persons to the full and equal enjoyment of places of public accommodation without discrimination on the ground of race or color.

8. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for an injunction and a declaratory judgment is their only means of securing adequate relief. Plaintiffs and the class they represent are now suffering and will continue to suffer irreparable injury from defendant's acts and policy or practice of racial discrimination unless relief is provided by this Court.

9. As a direct and proximate result of the wrongful acts of defendant alleged herein, plaintiffs have suffered, and will continue to suffer, actual damages from (a) humiliation, embarrassment and mental and emotional suffering caused by the defendant's custom, policy and practice of racial discrimination; and (b) the deprivation by defendant of the statutory rights alleged in paragraph 7 above. Therefore,

Plaintiffs Colin M. Gonzales, Raymond Gonzales and Margaret R. Gonzales each claim actual and punitive or exemplary damages in the amount of $2000, or a total of $6000.

WHEREFORE, plaintiffs respectfully pray that this Court enter judgment for plaintiffs as follows:

1. Declaring that defendant's custom, policy and practice of discriminating on the basis of race or color with respect to the admission of children to educational and

recreational facilities and programs operated by defendant is violative of rights secured to plaintiffs and the class they represent under the provisions of 42 U.S.C. Section 1981, and 42 U.S.C. Section 2000a.

2. Granting plaintiffs and the class they represent a preliminary and permanent injunction enjoining defendant, its agents, employees and those acting in concert with it from discriminating on the basis of race or color with respect to the admission of children to educational and recreational facilities and programs operated by defendant.

3. Granting plaintiffs judgment against defendant, jointly and severally, for actual and punitive or exemplary damages in the amounts specified in paragraph 9 above.

4. Awarding plaintiffs their costs herein.

5. Awarding plaintiffs reasonable attorneys' fees.

6. Granting plaintiffs and the class they represent such further and additional relief as the Court may deem just and proper.

/s/ ALLISON W. BROWN, JR.
Allison W. Brown, Jr.
Suite 437
300 Connecticut Avenue, N.W.
Washington, D. C. 20008
202/254-9341

/s/ ROBERT M. ALEXANDER
Robert M. Alexander
2011 South Glebe Road
Arlington, Virginia 22204
703/920-7722

Attorney for Plaintiffs

Of Counsel:

Roderick V. O. Boggs
Washington Lawyers Committee for
Civil Rights Under Law
733–15th Street, N.W.
Washington, D. C. 20005

I, Raymond Gonzales, have read the foregoing complaint and have personal knowledge of the facts referred to therein. Said facts are true to the best of my knowledge and belief.

/s/ R. GONZALES

Subscribed and sworn to this

day Nov. 1972.

/s/
Notary Public

I, Margaret R. Gonzales, have read the foregoing complaint and have personal knowledge of the facts referred to therein. Said facts are true to the best of my knowledge and belief.

/s/ MARGARET R. GONZALES

Subscribed and sworn to this

15 day Dec. 1972.

/s/
Notary Public 5-22-73

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

ANSWER TO COMPLAINT

[Filed February 13, 1973]

Comes now the Defendant and by way of Answer to the Complaint filed herein respectfully represents to this Court as follows:

!. The Complaint fails to state a cause of action upon which relief can be granted, and further the Statute of Limitations bars this action and/or laches bars the equitable relief sought herein.

2. The Defendant, through its appropriate agent, denies the jurisdiction of this Court is invoked under the Statutes cited under the facts in this case, and further denies the Defendant operates any place of public accommodation, but says rather it is a completely private educational institution.

3. The Defendant, through its appropriate agent, denies any of Plaintiffs' rights have been violated and denies they are entitled to the relief sought in Paragraph 2 of the Complaint, and further deny any custom, policy or practice of discrimination.

4. The Defendant, through its appropriate agent, denies the Plaintiffs have a standing to sue under Rule 23(b) (2) of the Federal Rules of Civil Procedure as alleged in Paragraph 3 of the Complaint, in view of the facts in this

case. The Defendant also denies the remaining allegations of Paragraph 3 of the Complaint.

5. The Defendant has no knowledge of the allegations alleged in Paragraph 4 of the Complaint and neither admits nor denies the truth thereof.

6. The Defendant admits the allegations of Paragraph 5(a) of the Complaint and says in addition thereto the Fairfax-Brewster School, Inc. is a completely private school offering no facilities for public accommodations.

7. The Defendant admits in answer to Paragraph 5 (b) that it furnishes food to its own students in a private dining hall for said students; the place or origin of such food is in many cases unknown to the Defendant and the Defendant's agents, but no such food is used outside the scope of its private operation.

8. The Defendant has no knowledge as to the truth of the allegations in Paragraph 5(c) but denies they have any application to the matter of this controversy.

9. The Defendant, through its appropriate agent, denies the allegations of Paragraphs 6 (a), 6(b), 7, 8 and 9 of the Complaint.

WHEREFORE, the premises considered, the Defendant prays the Complaint be dismissed with costs and reason-attorneys fees to the defendant.

Robert S. Reiss, President
Fairfax Brewster School, Inc.
Defendant

Wesley E. McDonald, Sr.
Attorney for Defendant
3675 Military Road
Arlington, Virginia

B. Austin Newton, Jr.
Attorney for Defendant
440 Maple Avenue East
Vienna, Virginia

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

MOTION TO DISMISS

[Filed May 15, 1973]

Comes now the Defendant, Fairfax-Brewster School, Inc., through counsel, and moves this Honorable Court to dismiss this action for the following reasons:

1. The Court is without jurisdiction to hear this matter.

2. The allegations set out in the complaint are not actionable.

3. The Statute of Limitations has expired.

Wesley E. McDonald, Sr.
Attorney for Defendant
3675 Military Road
Arlington, Virginia

B. Austin Newton, Jr.
Attorney for Defendant
440 Maple Avenue East
Vienna, Virginia

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

ORDER

[Filed July 11, 1973]

This cause came on to be heard on Defendant's motion at the time of the pre-trial herein for leave to amend its Answer, and it appearing that such leave should be granted, it is by the Court, this 11 day of July, 1973,

ORDERED that the Defendant's Answer be and the same hereby is amended to add the following paragraphs of defense:

"10. Defendant denies that admission to its private school for children, or to its summer camp for children, constitutes a contract within the meaning of 42 U.S.C. 1981.

11. Defendant says that if admission to its private school for children, or to its private summer camp for children, constitutes a contract within the meaning of 42 U.S.C. 1981, so as to give the infant plaintiff, or any other children, whether white, negro or of any other race, the right of compulsory admission thereto, then to such extent the statute is unconstitutional and (1) denies the rights of free speech and association guaranteed to the defendant, to the children attending defendant's private school, or private summer camp, and to their parents, under the First Amendment to the Constitution of the United States, (2) denies them the right of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States, and (3) imposes involuntary servitude upon them in violation of the Thirteenth Amendment to the Constitution of the United States.

12. Defendant denies that it is engaged in or affects interstate commerce in the operation of either its private school for children or its private summer camp for children, or that defendant, by definition or policy intendment, comes within the terms of 42 U.S.C. 2000a.

/s/ ALBERT V. BRYAN, JR.
Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

[Title omitted in printing]

* * * * *

ORDER

[Filed July 16, 1973]

THIS CAUSE came on to be heard upon the defendant's Motion to Dismiss this action, and it appearing to the Court that the claims of plaintiffs Raymond Gonzales and Margaret Gonzales for monetary damages are barred by Virginia's two-year statute of limitations applicable to personal injury actions, and that the requests for declaratory and injunctive relief, being based on alleged continuing wrongs, are not barred by said statute, it is by the Court this 16 day July, 1973,

ORDERED, ADJUDGED AND DECREED that the claims of Raymond Gonzales for monetary damages are dismissed; and it is further

ORDERED that defendant's Motion to Dismiss in all other respects is denied without prejudice.

/s/ ALBERT V. BRYAN, JR.
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

STIPULATION OF FACTS

[Filed July 16, 1973]

1. Raymond and Margaret R. Gonzales are members of the Negro or non-Caucasian race.

2. Colin M. Gonzales is the son of Raymond and Margaret R. Gonzales.

3. Defendant, Fairfax-Brewster School, Inc. is located in Fairfax County, Virginia, where it operates a school comprised of pre-primary through sixth grade, as well as a summer camp.

* * * * *

7. Defendant's summer camp, which has operated since 1962, has never had a Negro child enrolled, to defendant's knowledge.

* * * * *

10. All of the students enrolled in the defendant's school are residents of Virginia.

11. The average total enrollment at defendant's school for the academic years 1955-1956 through 1972-1973 are as follows:

1955-56	21
1956-57	89
1957-58	94
1958-59	91
1959-60	118
1960-61	118
1961-62	138
1962-63	140
1963-64	141
1964-65	178
1956-66	194
1966-67	222
1967-68	231
1968-69	208
1969-70	177
1970-71	207
1971-72	193
1972-73	223

12. The average total enrollment at the summer camp for the years 1962 through 1972 are as follows:

1962	21
1963	31
1964	70
1965	79
1966	105
1967	125
1968	145
1969	174
1970	138
1971	165
1972	236

Attorney for Plaintiffs

Attorney for Defendant

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

INTERROGATORIES

* * * * *

[Filed July 16, 1973]

The defendant is hereby requested to answer the following interrogatories, propounded by plaintiffs pursuant to Rule 33 of the Federal Rules of Civil Procedure, and to furnish plaintiffs with a copy of such answer within 30 days of the date of service hereof.

* * * * *

10. State the number of Negroes enrolled in Fairfax-Brewster School for each academic year from the time the school commenced operations through 1972-1973.

* * * * *

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

[Title omitted in printing]

* * * * *

ANSWERS TO INTERROGATORIES

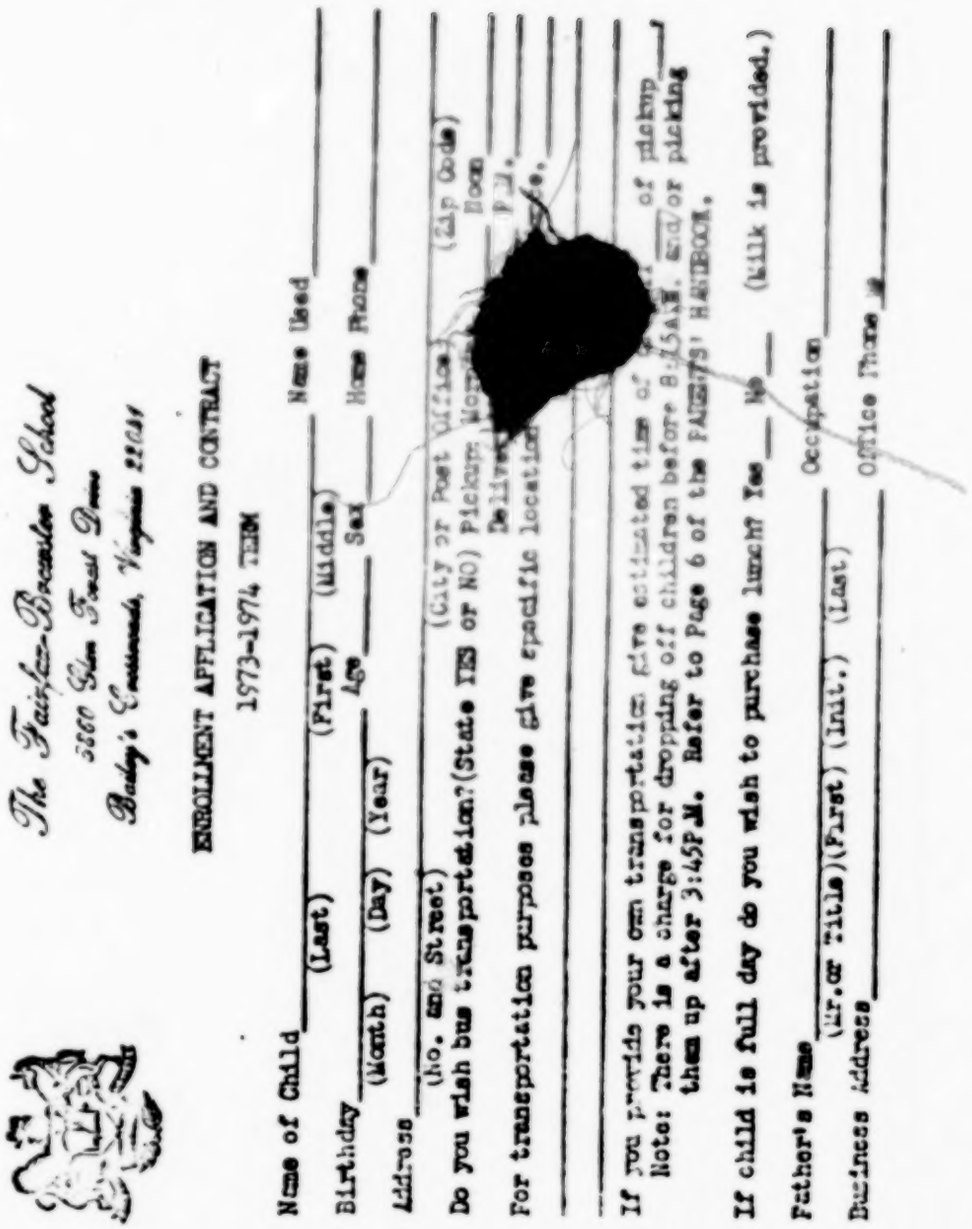
* * * * *

10. None, to our knowledge.

* * * * *

- - - - - - - - - - - -

Plaintiff's Exhibit No. 1
Filed July 16, 1973



The Fairfax-Brenzikofer School
3500 Old Lee Highway
Fairfax, Virginia 22030

ENROLLMENT APPLICATION AND CONTRACT
1973-1974 TERM

Name of Child _____ (Last) _____ (First) _____ (Middle) _____ Name Used _____
Birthday _____ (Month) (Day) (Year) Age _____ Sex _____ Home Phone _____
Address _____ (No. and Street) (City or Post Office) (Zip Code)
Do you wish bus transportation? (State YES or NO) Pickup: Home _____ Bldg. _____
For transportation purposes please give specific location. Delivery: Home _____ P.M.

If you provide your own transportation give estimated time of pickup _____
Note: There is a charge for dropping off children before 8:45AM. and/or picking them up after 3:45PM. Refer to Page 6 of the PARENTS' HANDBOOK.

If child is full day do you wish to purchase lunch? Yes ___ No ___ (Milk is provided.)

Father's Name _____ (Mr. or Title) (First) (Init.) (Last) Occupation _____ Office Phone # _____
Business Address _____

Mother's Name_____ Office Phone_____

Business Address_____ Occupation_____

Child's Physician_____ Office Phone_____

In the event the parent, guardian, or physician cannot be reached in case of emergency may we call our doctor? Yes____ No____

Previous School Attended_____ When_____

Number of Other Children in Family_____ Their Ages_____

Child's Religion_____ Special Talents_____

Disabilities_____

Will you permit your child to accompany his/her class on field trips scheduled for the 1973-1974 school year? Yes____ No____

How did you first learn of Fairfax-Brewster School?_____

PLEASE CHECK THE GENERAL GRADE OR LEVEL DESIRED:

		MORNING	FULL DAY					
Pre-Primary:	Nursery..	____	____	The Grades	One	____	Five	____
	Jr. Kind.	____	____		Two	____	Six	____
	Int. Kind.	____	____		Three	____		
	Sr. Kind.	____	____		Four	____		

(Please read and sign the contract on the back of this page.)

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FOR OFFICE USE ONLY

Date of Interview_____ Visitors_____

Class Visited_____ Remarks_____

Date Issued_____ Envelope____ Par.Hdbk.____ Phys.____ PreSchHdbk.____ Other_____

Reg.FeePd._____ Acpt.Dt._____ Enr.List____ Card____ Folder_____

Last Name	First	Middle	Nickname	Birthdate	Age 9/1	Grade (AM,PM,FD)		Teacher
Parents' Names for Mailing Purposes						AM	Noon	PM
Street Address		Post Office		State	Zip Code	Lunch	Phy.Exam.Food,	
Home Phone	Exact Home Location					Newsletter	Number	

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ENROLLMENT CONTRACT

Before an enrollment may be accepted a personal interview between the school office, the parent, and the child is required. The parent must complete the enrollment form and sign the contract on the reverse side. A $20.00 registration fee(not refundable) for new students must accompany this enrollment form. Old students must pay a $20.00 deposit (not refundable) which is deducted from the first tuition payment.

For students registering during the extremely busy period of August 20 through September 14 a late registration service charge of $10.00 is required. This charge is not refundable, nor is it applicable to any tuition payment.

Children are registered for the entire school year. Tuition, however, may be paid either on a monthly or a semester basis. The semester tuition plan is available only to students enrolled for the entire semester, and payment in full must be made by September 7 and February 1. Monthly tuition must be paid in full by the eighth day of each month, and the June payment, which is one-half of the regular monthly payment, is due by June 1. If tuition is not paid bythe due date a service charge of $5.00 is required. Payments not received by the 20th of the month will result in mandatory suspension.

In case of withdrawal two weeks written notice must be sent to the administrative office. If the child is withdrawn without notice two weeks tuition will be charged. The school will refund unused tuition starting two weeks from the date it is notified of withdrawal.

A physical examination form, signed by the child's physician, must accompany the enrollment forms of new students. The State of Virginia requires that this form be renewed each year for old students.

Fairfax-Brewster School reserves the right to accept or deny the application of any child for any reason whatsoever. If the application is denied the registration fee or deposit will be returned to the applicant.

I WISH TO ENROLL_____ IN FAIRFAX-BREWSTER SCHOOL IN ACCORDANCE WITH THE STIPULATIONS AND REQUIREMENTS STATED IN THIS APPLICATION. I HAVE RECEIVED A PARENTS' HANDBOOK FOR THE 1973-1974 YEAR, AND I AGREE TO COMPLY WITH THE POLICIES AND REGULATIONS STATED THEREIN.

Date_____ Signed_____

NOTE: A copy of this enrollment contract will be sent to parents along with a written notification of the child's acceptance.

TRANSPORTATION LOCATION FORM

Morning Pick-Up Address_____ Phone_____

Specific Location and Instructions_____

If specific pick-up time is required, for working parent, state time._____

Adult in charge of child if other than parent_____

Delivery: Noon____ PM____. Is delivery address same as above? If not, give address_____

Specific Locations and Instructions_____

If specific delivery time is required, please specify time. _____

Adult in charge of child if other than parent_____

Fairfax-Brewster School
5860 Glen Forest Drive
Bailey's Crossroads, Virginia 22041

PHYSICAL EXAMINATION FORM

Name of Child_____ Sex____Birthdate_____

Record of Illnesses (Give dates if possible):

Red Measles_____ Scarlet Fever_____ Frequent Throat Infections_____
German Measles_____ Rheumatic Fever_____ Frequent Ear Infections_____
Mumps_____ Convulsions_____ Other_____
Chicken Pox_____ Frequent Colds_____ _____

Dates of Immunizations:

Diptheria_____ D.P.T. Booster 1._____ 2._____ 3._____
Smallpox_____ TetanusBooster 1._____ 2._____ 3._____
Whooping Cough_____ Polio.....1._____ 2._____ 3._____, 4._____
Tetanus_____ Other_____

Physical Examination: Height_____ Weight_____ B.P._____

Vision: without glasses R_____ L_____ Hearing: R_____
with glasses R_____ L_____ L_____

Check Normal - Note Abnormalities:

General appearance_____ Bones_____ Thyroid_____
Skin and hair_____ Feet_____ Heart_____
Nose_____ Nutrition_____ Lungs_____
Oral Tissues_____ Chest_____ Ligaments_____
Throat_____ Abdomen_____ Muscles_____
Lymphnodes_____ Hernia_____

Statement of general physical condition_____

Conditions demanding special attention at school_____

_____

Date of Child's last visit to dentist _____

Physician's Name_____ Office Phone_____
(Please print.)

Physician's Signature_____ Date_____

MESSAGE TO PARENTS:

Before a child can be officially accepted by Fairfax-Brewster School, a physical examination form must be submitted to the office. This form is effective for one year from the date of the examination and must be renewed each year. Please have your physician fill out and sign this form. We will do all that we can to fulfill our part in following recommendations which your physician indicates above.

Fairfax-Brewster School
3860 Glen Forest Drive
Bailey's Crossroads, Virginia 22041

820-2680

ACCEPTANCE

_____
_____
_____

Fairfax-Brewster School is pleased to accept the enrollment of_____ as a_____day student for the 1973-1974 school term starting on_____. Tentative grade assignment (unless otherwise determined by the school) will be in_____. Your registration fee of $_____ was received on_____, 19__.

Cordially yours,
Olga M Reiss
Olga M. Reiss
Registrar

PARENT'S COPY OF ENROLLMENT CONTRACT

Before an enrollment may be accepted a personal interview between the school office, the parent, and the child is required. The parent must complete the enrollment form and sign the contract on the reverse side. A $20.00 registration fee(not refundable) for new students must accompany this enrollment form. Old students must pay a $20.00 deposit (not refundable) which is deducted from the first tuition payment.

For students registering during the extremely busy period of August 20 through September 14 a late registration service charge of $10.00 is required. This charge is not refundable, nor is it applicable to any tuition payment.

Children are registered for the entire school year. Tuition, however, may be paid either on a monthly or a semester basis. The semester tuition plan is available only to students enrolled for the entire semester, and payment in full must be made by September 7 and February 1. Monthly tuition must be paid in full by the eighth day of each month, and the June payment, which is one-half of the regular monthly payment, is due by June 1. If tuition is not paid by the due date a service charge of $5.00 is required. Payments not received by the 20th of the month will result in mandatory suspension.

There will be no cash rebate or refund of tuition for absence or exclusion for any reason whatsoever while a child is enrolled in Fairfax-Brewster School.

In case of withdrawal two weeks written notice must be sent to the administrative office. If the child is withdrawn without notice two weeks tuition will be charged. The school will refund unused tuition starting two weeks from the date it is notified of withdrawal.

A physical examination form, signed by the child's physician, must accompany the enrollment forms of new students. The State of Virginia requires that this form be renewed each year for old students.

Fairfax-Brewster School reserves the right to accept or deny the application of any child for any reason whatsoever. If the application is denied the registration fee or deposit will be returned to the applicant.

I WISH TO ENROLL _____ IN FAIRFAX-BREWSTER SCHOOL IN ACCORDANCE WITH THE STIPULATIONS AND REQUIREMENTS STATED IN THIS APPLICATION. I HAVE RECEIVED A PARENTS' HANDBOOK FOR THE 1973-1974 YEAR, AND I AGREE TO COMPLY WITH THE POLICIES AND REGULATIONS STATED THEREIN.

Date _____ Signed _____

PARENTS: Please keep this copy of the contract with your PARENTS' HANDBOOK.
Do not return it to us.

Plaintiffs' Exhibit No.
(Marked Plaintiffs' Exhibit No. 2)

[Filed July 16, 1973]

The Fairfax-Brewster School
5860 Glen Forest Drive
Bailey's Crossroads, Virginia 22041

DATE May 16, 1969

SUBJECT: Student Placement Application.

The school is, at this time, unable to accommodate the application

of Colin A. Gonzales

for Safari Summer Day Camp

[X] Your check submitted with form is hereby returned.
Also enclosed is the medical form which you so kindly had completed in advance.

[ ] No check submitted with form.

Sincerely yours,

[signature]
Registrar

Plaintiffs' Exhibit No.
(Marked Plaintiffs' Exhibit No. 3 by reporter)

YELLOW PAGES INDEX ON PAGE 5 SCHOOLS 809

FAIRFAX-BREWSTER

PRIVATE SCHOOL

NURSERY • KINDERGARTEN • GRADES 1 THROUGH 6

An investment in your child's future...

STAFF ★ CURRICULUM ★ FACILITIES ★ SERVICES

CLOSE SUPERVISION • THOROUGH TESTING & REPORTING • PHONETIC READING METHOD • FOREIGN LANGUAGE • ART, MUSIC • SPORTS PARK-LIKE GROUNDS • BEAUTIFUL WILLIAMSBURG BUILDINGS • DOOR-TO-DOOR BUS SERVICE • HOT LUNCHES • DRAMATICS • FIELD TRIPS

Comprehensive Pictorial Catalog Sent Upon Request

YEAR AROUND SERVICE
Open 7 A.M. to 6 P.M.

Safari Summer Day Camp | *Totem Lodge* Summer Program

820-2680

Near Historic Baileys X Roads

Defendants' Exhibit No. 1

[Filed July 16, 1973]

THE FAIRFAX-BREWSTER SCHOOL

The Fairfax-Brewster School was founded in 1954 as a private educational institution of exacting standards for the early education and social development of young boys and girls. The school offers instruction for children from grade one through grade six and maintains a separate school department for pre-primary instruction and specialized activities.

The school is situated on park-like grounds near the Bailey's Crossroads of Civil War historical note. On what is now the school site, Julia Ward Howe was inspired to write the immortal words to the Battle Hymn of the Republic as she watched the Army of the Potomac pass in review before Lincoln on November 20, 1861.

The school buildings are characterized by their graceful contemporary Williamsburg lines and general character. The classrooms are attractively decorated, furnished, and well lighted. Westcott Hall, the first annex to be constructed, provides additional classrooms and auditorium facilities for school plays, parents' meetings, and other uses.

The school campus is divided into several recreational areas to accommodate the various age and activity groups for both individual and organized sports.

The woodland groves, numerous evergreens, and flowering shrubs provide an interesting and beautiful setting for all school activities.

Educational Objectives

The major objectives of The Fairfax-Brewster School are to provide the child with a sound basic education, to develop in him desirable social attitudes, to encourage his natural curiosity, to stimulate his quest for knowledge, and to develop within him an understanding and appreciation of his American heritage.

The challenges of our era demand that we develop in our youth receptive and disciplined minds by establishing and maintaining worthy goals and by seeing to it that the child realizes their value and exerts uncommon effort to achieve them. Such effort can and should begin with the child's first school experiences.

The Fairfax-Brewster School seeks to fulfill its objectives by providing a school environment highly conducive to the mental growth of the child, and by affording him every opportunity to develop his talents and capabilities to the fullest.

Under the guidance of dedicated teachers and a school philosophy which encourages the pursuit of excellence and high ideals, the young student can acquire the essentials and take pride in his achievements.

The Elementary School

The elementary school, consisting of grades one through six, offers a combination of small classes, competent teaching, and individual attention which enables the child of normal or above ability to master the prescribed work of his grade by the end of the school year.

Proper work habits are established from the very beginning. The child is encouraged to do his best in all things,

to accept responsibility for his work, and to profit from his mistakes as well as his successes.

Curriculum

The curriculum utilizes textbooks of leading educational publishers which are nationally accepted and which meet the school's particular requirements. Selected supplementary materials, the school library reference books, educational movies and film strips, and related field trips enhance the courses of study.

Language Arts:

Reading – As reading is the most important element in the curriculum, careful attention is given to all the factors which bear on the child's ability to successfully cope with the emotional and physical experience of learning to read. Phonetic and sight methods are used to teach the fundamentals. As skill and independence develop, the second grade child becomes capable of absorbing library books in addition to his regular texts, and in the third grade he is taught to consult the dictionary and other reference materials. Throughout the grades the continuous reading program enables the child to build a substantial vocabulary, to read orally with clarity and expression, and to read silently with speed and comprehension. While teaching the child to become a proficient reader, the staff endeavors to cultivate in him an appreciation of the English language and a taste for good literature.

Writing – In first grade the child is taught manuscript printing. In the latter part of second grade printing is converted to cursive writing. Spelling, grammar, and punctuation, integral parts of the language program, are emphasized at all levels. Training in creative expression

through regular written compositions begins in second grade.

Speech – Oral recitation is an important phase of the language arts and is emphasized throughout the grades, with training in clarity, poise, and expression so that the child learns to communicate effectively.

Arithmetic

The study of numbers is a functional and rational endeavor which begins with the use of concrete materials, pictures, objects, etc., and systematically progresses to include abstract symbols and meanings. One concept leads to, builds upon, or enlarges another, and the processes are interrelated. The end objectives for all grades are: the understanding of numbers; the development of reasoning ability; the ability to solve problems related to everyday situations; and an understanding of the essential value of mathematical knowledge.

Geography and History

These very important subjects are introduced as formalized subjects in the third grade and increase in importance with each successive grade. Although taught as separate subjects their close relationship makes each more understandable and enjoyable. Preliminary to the introduction of geography and history is the teaching of social studies in first and second grades, covering units on the home, school, and community. An American Heritage Program, which compliments the study of American History, is designed to give the child an understanding and deep appreciation of his heritage–those great ideals and institutions upon which the American way of life is based–so that he can become oriented to it, protect it, and contribute to it.

Science

Science education is concerned with helping the growing child to understand his environment and to relate himself to it. The course of study is designed to provide a framework of concepts, built up through experiences, on which to base future learning. Science is given meaning and made practical through classroom projects, experiments, discussions, and nature study as adjuncts to the regular textbook subject matter.

Foreign Language

Conversational French is introduced in the first grade and is taught throughout the grades to those students who show an aptitude for it. Emphasis is placed mainly upon the oral aspect of the language. Through studies of French customs and life as compared with our own, students acquire a significant vocabulary and understanding of the language, as well as an enthusiasm which should continue in later school years.

Other Subjects

Physical education and health, music, drama, and arts and crafts complete the curriculum.

Testing and Evaluation

Each grade school student is given a mental maturity test to help indicate his intellectual potential and to ascertain his proper grade placement. Standardized achievement tests are administered at the end of each semester to measure the child's academic achievement in relation to national norms and school established standards. These tests aid in evaluating and re-orienting teaching in the light of the particular abilities and needs of the student.

Readiness tests are given to all senior kindergarten children at the end of the school year and to newly enrolled first grade pupils to help determine their readiness for first grade work.

Comprehensive report cards inform parents of their child's academic, emotional, social, and physical development in terms that are sensible and as complete as possible. There are four reporting periods during the school year.

A pupil will be promoted only if he has satisfactorily completed the required curriculum of his grade. Upon promotion he will be eligible for acceptance into any other school system.

The Pre-School

The pre-school period is one of adjustment from the sheltered home environment to the stimulus of daily contact with the outside world on equal childhood terms. The young child gains his independence and self-confidence through group and individual experiences in a friendly and stable atmosphere.

Fairfax-Brewster offers a carefully planned program designed to meet the needs and interests of the pre-school child and to prepare him for a successful beginning in the first grade–mentally, emotionally, socially, and physically.

Pre-school children of ages three and above are placed in appropriate classes according to age and maturity. All activities are geared to the needs and abilities of these children.

The Readiness Program – During the senior kindergarten year a formal readiness program is introduced. The reading readiness phase utilizes workbooks which help the child to acquire skills necessary for learning to read in first grade. The child is taught: left to right eye movements; the difference between left and right hand; coordination of eye and hand; how to develop visual and auditory discrimination, problematic thinking and memory; color perception; fundamental phonetics; and other important learning experiences. The numbers phase teaches the child to recognize the numbers from one to ten, to make them correctly, and to understand what each number means. At the end of the school year each child is given a standardized readiness test to ascertain his potential for first grade work.

Report cards are sent to parents for each of the four reporting periods. Parent-teacher conferences are encouraged when necessary and are arranged through the office.

Morning or full day classes are offered to all pre-school children. Afternoon classes are offered to senior kindergarten children.

Pre-school children who attend full day are provided cots for their afternoon rest periods. Additional supervised activities are offered in the afternoon.

Each pre-school child is requested to keep at school a painting smock, a small rest blanket, and a pair of overshoes. This equipment, as well as all other outer clothing and accessories, must be marked with the child's name.

Enrollment Procedures

Parents are invited to visit Fairfax-Brewster School and inspect its facilities. Appointments may be arranged by calling the office, HU 1-2680, Mondays through Fridays during school hours.

Prior to the acceptance of an enrollment a personal interview between the administrative office, the child, and his parent is necessary. New grade students will be accepted upon their qualifications as based upon previous records and the results of an entrance examination.

Parents will fill out an enrollment form and sign the contract. A formal acceptance will be forwarded to the parents.

A physical examination form, signed by the family physician, is required for each child.

The program includes:

Free play period
Social adjustment through playing and experimenting with specially selected equipment and materials.

Listening and learning period
Opening exercises, health inspection, pledge of allegiance, share and tell, discussions

Aesthetic activities
Songs, finger games, dramatizations, records, rhythm band, stories and poems

Snack time
Grace, then milk or juice and cookies, followed by a short rest

Work period
Cutting, pasting, painting, finger painting, pastel and crayon art, clay modeling, numbers games, reading and numbers readiness

Defendants' Exhibit No. 2
[Filed July 16, 1973]

THE FAIRFAX-BREWSTER SCHOOL
PARENTS' HANDBOOK
1969-1970 Year

ENROLLMENT PROCEDURES

Registration: Before an enrollment can be completed a personal interview between the administrative office, the parent, and the child is necessary. The parent must complete the enrollment form and sign the contract on the reverse side. A registration fee of $20.00 (not refundable) is required for new students which must accompany the enrollment form. Old students must pay a $20.00 deposit (not refundable) which is deducted from the first tuition payment. If an application is rejected the school will refund the registration fee.

* * * * *

Previous Records: Grade school applicants must submit report cards and all other pertinent records from the school previously attended.

Entrance Examinations: If previous scholastic records are inadequate or questionable entrance examinations will be given. The fees are $10.00 for a single session and $7.00 for each additional session, payable in advance.

* * * * *

Age Requirements: A senior kindergarten child should become five years old before January 1. A student is acceptable in first grade if his sixth birthday occurs by the end of the year. Mental, emotional and physical maturity, however, must be considered in proper grade placement. If a child cannot adjust to the work of his grade within six weeks the parent will be notified.

Defendant's Exhibit No. 3

[Filed July 16, 1973]

FIRST GRADE CLASS: 1969-70 Teacher: Mrs. Williams

STUDENT	PREVIOUS SCHOOLING (FB–Fairfax-Br. Senior Kind.)	%ile Rank as of 9/69*
Baier, Scott	FB	84
Bell, Theresa	FB	99
Brouillette, Kevin	United Church School, Canada	96
Chance, Courtney	FB	79
Cooper, Callie	FB	98
Duncan, Billy	FB	79
Ehrle, Richard	FB	98
Hyndman, Mark	FB	94
Johnson, Tim	Falls Church Episcopal Day School	81
Kildoo, Mike	FB	96
Lowenbach, Marc	FB	99
Madron, Lisa	FB	97
Martin, Mildred	Bobbye's Private School	97
Medell, George	FB	84
Morgan, Dorenda	FB	98
Morrissey, John	FB	81
Murphy, Scott	FB	99
O'Bannon, Ricky	FB	77
Porter, Tommy	Three Bears Kindergarten	86
Singleton, Wendy	FB	99
Sitter, Debbie	FB	95
Shay, John	FB	94
Smith, Cherie	FB	93
Shafer, Charles	FB	65
Yocum, Charles	Merrilinga Kindergarten, Australia	63

*Based on Metropolitan Readiness Test, Form B, given Sept. 1969.

This class opened in September, 1969, with 25 students. It closed in June with 21. The average for the year was 22 1/2 students.

Only five children in the class were new students, and all five had received kindergarten training the previous year.

READINESS STATUS OF CLASS IN TERMS OF PERCENTILE RANK

(as of 9/69)

Old students	90 %ile
New students	84 1/2 %ile
Entire class	89 %ile

Defendant's Exhibit No. 4

[Filed July 16, 1973]

FAIRFAX-BREWSTER SCHOOL

Early-Late Care

This service is available to children of working parents who provide their own transportation to and/or from school. It is offered before and after regular school hours between 7 A.M. and 6 P.M.

Home-School Relations

An open house is held each year to acquaint parents with their child's teacher and the school. Newsletters and bulletins keep parents informed of important and interesting school issues and events. Programs and other special events are offered from time to time to stimulate home-school relations.

Report Cards

Report cards are issued four times during the school year. These cards indicate to parents as objectively as possible the

intellectual, social and physical development of the child. Close supervision and evaluation of the daily progress of each child is maintained, and any difficulties experienced are promptly brought to the attention of the parents. No child will be promoted to the next grade without having satisfactorily fulfilled the requirements of his grade.

Year Around Service

By providing early-late services, a summer camp program, and vacation day care (by special arrangement) Fairfax-Brewster School endeavors to meet the needs of parents the year around.

Admissions Policy

The admittance of any child to Fairfax-Brewster School is based on the following:

The child must be of average or above intelligence and have an achievement potential in keeping with the class he seeks to enter. He must be emotionally, socially, and physically acceptable.

As the one abiding objective of the school is to educate young children, the Admittance Committee will not pass favorably upon any applicant unless assured that his presence in Fairfax-Brewster will be in the best interests of himself, his respective classmates, and the school in general.

Specific enrollment procedures and detailed information on all aspects of the school are found in the Parents' Handbook.

Robert S. Reiss, Director

SAFARI SUMMER DAY CAMP

Fairfax-Brewster is the originator of **Safari** Summer Day Camp. **Safari** excites and holds the interest of children because it combines the best elements of the typical day camp with the adventurous concept of the safari.

Safari campers are transported in colorful "safari-kars" which are painted to resemble the skins of various African animals. Safaris are taken to places up to fifty miles from school headquarters. While our purpose is to give each young explorer a "shot at big game fun" it is not all traveling and exploring. Woven into the program throughout the summer are top rated camp activities; swimming with instruction; selected sports; arts and crafts; overnight camp-outs; and much more.

Safari is the culmination of the school's desire to create a recreational program in which children have more fun and learn more during their summer vacation.

The **Junior** "edition" of the summer camp program provides the pre-school child with a safe, happy and constructive summer. Activities are designed to appeal specifically to the interests of the young child vacationer and include: aquatic play, games, arts and crafts, nature study, care of the school pets, pony rides, picnics, and occasional "junior safaris" to nearby places. Activities are conducted primarily in our pre-school building and adjacent playgrounds, and they are under the direction of members of our Pre-Primary Department. The Junior Program is an ideal way to introduce the very young child to a school environment.

Safari Program: for children to enter Grades 1-6 (ages 5 3/4–11)

Junior Program: for pre-school children, ages 2 1/2–5 1/2

Defendant's Exhibit No. 5

[Filed July 16, 1973]

NON CAUCASIANS IN ATTENDANCE
9/67–6/73

1967-68

David, Pacita	Philippines
Tran, Phuong Lan	Siamese
Khan, Hakin	Indian
Kundu, Marina	Indian
Kundu, Apurba	Indian

1968-69

Kundu, Apurba	Indian
Kundu, Marina	Indian
Bennett, Dawn	Oriental
Kawakami, Wataru	Oriental
Kim, Chris	Oriental
Surti, Devesh	Asian

1969-70

Torii, Hiromi	Japanese
Bennett, Dawn	Oriental
Bennett, April	Oriental

1970-71

Estberg, May Lee	Oriental
Estberg, Timothy	Oriental
Kim, Kathy	Oriental
Tabuko, Sonoka	Japanese
Torii, Hiromi	Japanese
Wong, Douglas	Chinese
Nakhleh, William	Asiatic

1971-72

Amirshahi, Arya	Persian
Diab, Nirvana	Oriental
Lee, Sang Yong	Chinese
Massoud, Sayed	Arabic
Naito, Mikio	Japanese
Rizvi, Kamal	Asian
Rizvi, Mariam	Asian
Shoji, Hiroyuki	Japanese
Wong, Douglas	Chinese
Choi, Hee Suk	Chinese
Murakami, Yuki	Japanese
Singh, Alka	Indian
Torii, Hiromi	Japanese
Nakhleh, William	Asiatic

1972-73

Amirshahi, Arya	Persian
Kikura, Seri	Japanese
Massoud, Sayed	Arabic
Murakami, Shinichiro	Japanese
Naito, Mikio	Japanese
Naito, Ryoji	Japanese
Rizvi, Kamal	Asian
Rizvi, Mariam	Asian
Shoji, Hiroyuki	Japanese
Singh, Alka	Indian

Enrollments:		n.c	% of total
1967-68	–231	5	2%
1968-69	–208	6	3%
1969-70	–177	3	1%
1970-71	–207	7	3 1/2%
1971-72	–193	4	2%
1972-73	–223	10	5%

Defendant's Exhibit No. 6

[Filed July 16, 1973]

COURSES OF STUDY

Senior Kindergarten

* Weather: precipitation, evaporation, condensation, wind, clouds, temperature, seasons, day and night

* Measurement: clocks, calendars, yardsticks, scales, thermometer

* Our Country, Our Flag, Our State; animals and plants in our State

Seeds: how they grow, their needs, how they travel

Money

Magnetism

Color: light and shadow

Holiday Celebrations: study of Christmas in Spain or other country compared to U.S. Christmas

* Reading and Phonics Readiness (with workbook and worksheets)

* Numbers Readiness (with workbook and worksheets)

Current Events (with Weekly Reader Surprise Newspapers)

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*Emphasized

First Grade

* Reading: 3 pre-primers and workbook
Primer and workbook

1st reader and workbook
2 or more supplementary readers (at least one at second grade level)

* Phonics: 3 phonetic reading-workbooks

* Language: written language workbook
spelling workbook

* Penmanship: workbook

* Mathematics: Grade 1 workbook

Science: textbook

Social Studies: textbook and Weekly Reader Newspaper

French: conversational

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*Emphasized

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MICHAEL C. McCRARY, infant,
by Curtis L. McCrary and Sandra McCrary)
his parents,
6062 Belleview Drive
Falls Church, Virginia 22041

COLIN M. GONZALES, infant,
by Raymond Gonzales and Margaret R.
Gonzales,
his parents,
6030 Vista Drive
Falls Church, Virginia 22041

CURTIS L. McCRARY, SANDRA McCRARY)
RAYMOND GONZALES and MARGARET
R. GONZALES,

Plaintiffs,

vs.

RUSSELL L. RUNYON and KATHERYNE
E. RUNYON
D/B/A BOBBE'S PRIVATE SCHOOL
820 S. Carlin Spring Road
Arlington, Virginia 22204

Defendants.

Civil Action
No. 495-72-A

RELEVANT DOCKET ENTRIES

1972

Dec. 19	Complaint, filed

1973

Feb. 15	Motion to dismiss and answer
Mar. 15	Amended answer

Apr. 16	Memorandum Opinion and Order by Judge Albert V. Bryan, Jr. dismissing claims for damages of Raymond and Margaret R. Gonzales
June 15	Motion to intervene, answer to complaint and counterclaim, filed
July 9	Motion to intervene, granted
June 19	Answer to coonterclaim
June 21	Answer and counterclaim of Intervenor filed
July 13	Stipulation filed
July 16 & July 17	Trial proceedings before Judge Bryan
July 27	Memorandum Opinion and Order by Judge Bryan granting relief to plaintiffs and enjoining defendants and intervenors
Sep. 14	Amendment entered to Court's order of July 27, 1973
Sep. 24	Amendment entered to Court's order of July 27, 1973

[Filed Dec. 19, 1972]

[Title omitted in printing]

COMPLAINT
FOR DECLARATORY JUDGMENT,
INJUNCTION AND DAMAGES

1. Jurisdiction of this Court is invoked Pursuant to 28 U.S.C. Section 1337, 1343(4), 2201 and 2202. This action is brought pursuant to 42 U.S.C. Section 1981 and 42 U.S.C. Section 2000a to secure for plaintiffs,

who are Negroes, the same right to make and enforce contracts as is enjoyed by white citizens, and to enforce the right of plaintiffs to the full and equal enjoyment of places of public accommodation without discrimination on the ground of race or color.

2. This is an action for a declaratory judgment as to plaintiffs' rights, an injunction and monetary damages, based on the maintenance by the defendants of a custom, policy and practice of discriminating on the basis of race or color with respect to the admission of children to educational and recreational facilities and programs operated by defendants.

3. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all similarly situated Negro citizens. Negro children as a class are barred or may be barred, because of their race or color, from admission to educational and recreational facilities and programs operated by defendants. The class represented by plaintiffs is so numerous that joinder of all members is impracticable; there are questions of law or fact common to the class; the claims of plaintiffs are typical of the claims of the class; and plaintiffs will fairly and adequately protect the interests of the class. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

4. a. Plaintiff Michael C. McCrary, infant, bring this action through his parents, Curtis L. McCrary and Sandra McCrary, who also sue individually. Said plaintiffs are residents of Fairfax County, Virginia; they are members of the Negro or non-Caucasian race.

b. Plaintiff Colin M. Gonzales, infant, brings this action through his parents, Raymond Gonzales and Margaret R. Gonzales, who also sue individually. Said plaintiffs are residents of Fairfax County, Virginia; they are members of the Negro or non-Caucasian race.

5. a. Defendants Russell L. Runyon and Katheryne E. Runyon operate Bobbe's Private School, an establishment located in Arlington County, Virginia, which provides nursery school, elementary school, and summer camp facilities and programs for children.

b. In the course of operating said programs, defendants furnish food for those who attend, which is consumed on defendants' premises. A substantial portion of said food originates outside of the State of Virginia and moves in interstate commerce.

c. Supplies and equipment used in the construction of Bobbe's Private School facilities, and used in the course of its operations, have originated outside of Virginia and have moved in interstate commerce.

6. a. On or about August 7, 1972, Plaintiff Michael C. McCrary's mother, plaintiff Sandra McCrary, spoke to an agent or employee of Bobbe's Private School about enrolling Michael in its nursery school program and after learning that he met the qualifications for admission, she informed said agent or employee that she would like to enroll him. When Sandra McCrary informed said agent or employee that Michael was of the Negro race, she was informed that he was unacceptable for enrollment because of his race.

b. At all times since August 7, 1972, plaintiff Michael C. McCrary has been prevented from attending

Bobbe's Private School, because of defendants' custom, policy and practice of denying admission to children of the Negro or non-Caucasian race.

7. a. On or about June 15, 1969, plaintiff Colin M. Gonzales' parents, spoke to an agent or employee of Bobbe's Private School about enrolling Colin in its elementary school program, and after learning that he met the qualifications for admission, Colin's parents informed said agent or employee that they would like to enroll him. When said agent or employee was told that Colin was of the Negro race, Colin's parents were informed that Colin was unacceptable for enrollment because of his race.

b. At all times since June 15, 1969, plaintiff Colin M. Gonzales has been prevented from attending Bobbe's Private School, because of defendants' custom, policy and practice of denying admission of children of the Negro or non-Caucasian race.

8. Defendants' failure and refusal to admit Negro or non-Caucasian children to educational and recreational facilities and programs operated by them is wilful, intentional, malicious, and in reckless disregard of the rights of plaintiffs guaranteed b, the Civil Rights Act of 1866 (42 U.S.C. Section 1981) and the Civil Rights Act of 1964 (42 U.S.C. Section 2000a). Defendants' custom, policy and practice of discriminating against persons of the Negro or non-Caucasian race deprives such persons of the same right to make and enforce contracts as is enjoyed by white citizens, and violates the right of such persons to the full and equal enjoyment of places of public accommodation without discrimination on the ground of race or color.

9. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for an injunction and a declaratory judgment is their only means of securing adequate relief. Plaintiffs and the class they represent are now suffering and will continue to suffer irreparable injury from defendants' acts and policy or practice of racial discrimination unless relief is provided by this Court.

10. As a direct and proximate result of the wrongful acts of defendants alleged herein, plaintiffs have suffered, and will continue to suffer, actual damages from (a) humiliation, embarrassment and mental and emotional suffering caused by the defendants' custom, policy and practice of racial discrimination; and (b) the deprivation by defendants of the statutory rights alleged in paragraph 8 above. Therefore,

Plaintiffs Michael C. McCrary, Curtis L. McCrary and Sandra McCrary each claim actual and punitive or exemplary damages in the amount of $2000, or a total of $6000.

Plaintiffs Colin M. Gonzales, Raymond Gonzales and Margaret Gonzales each claim actual and punitive or exemplary damages in the amount of $2000, or a total of $6000.

WHEREFORE, plaintiffs respectfully pray that this Court enter judgment for plaintiffs as follows:

1. Declaring that defendants' custom, policy and practice of discriminating on the basis of race or color with respect to the admission of children to educational and recreational facilities and programs operated by defendants is violative of rights secured to plaintiffs and the

class they represent under the provisions of 42 U.S.C. Section 1981, and 42 U.S.C. Section 2000a.

2. Granting plaintiffs and the class they represent a preliminary and permanent injunction enjoining defendants, their agents, employees and those acting in concert with them from discriminating on the basis of race or color with respect to the admission of children to educational and recreational facilities and programs operated by defendants.

3. Granting plaintiffs judgment against defendants, jointly and severally, for actual and punitive or exemplary damages in the amounts specified in paragraph 10.

4. Awarding plaintiffs their costs herein.

5. Awarding plaintiffs reasonable attorneys' fees.

6. Granting plaintiffs and the class they represent such further and additional relief as the Court may deem just and proper.

/s/ ALLISON W. BROWN, JR.
Allison W. Brown, Jr.
Suite 437
300 Connecticut Avenue, NW
Washington, D.C. 20008
202/254-9341

/s/ROBERT M. ALEXANDER
Robert M. Alexander
2011 South Glebe Road
Arlington, Virginia 22204
703/920-7722

Attorney for Plaintiffs

Of Counsel:

Roderick V.O. Boggs
Washington Lawyers Committee for
Civil Rights Under Law
733 15th Street, N.W.
Washington, D.C. 20005

I, Curtis L. McCrary, have read the foregoing complaint and have personal knowledge of the facts referred to therein. Said facts are true to the best of my knowledge and belief.

/s/Curtis L. McCrary

S.S. in County of Arlington
State of Virginia
Subscribed and sworn to this
8 day of November 1972.

/s/Dorothy V. Bogusky
Notary Public

I, Sandra McCrary, have read the foregoing complaint and have personal knowledge of the facts referred to therein. Said facts are true to the best of my knowledge and belief.

/s/Sandra McCrary

Subscribed and sworn to this
9th day of November 1972.
/s/Paul J. Bates
Notary Public

My Commission Expires April 28, 1973

I, Raymond Gonzales, have read the foregoing complaint and have personal knowledge of the facts referred to the

to therein. Said facts are true to the best of my knowledge and belief.

/s/Raymond Gonzales

Subscribed and sworn this 16
day of November 1972.

/s/John P. Young, Jr.
Notary Public

I, Margaret R. Gonzales, have read the foregoing complaint and have personal knowledge of the facts referred to therein. Said facts are true to the best of my knowledge and belief.

/s/Margaret R. Gonzales

Subscribed and sworn to this
15 day December 1972

/s/Stanley Ryan
Notary Public

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

* * * * *

[Filed 2/15/73]

Come now the defendants, Russell L. Runyon and Katheryne E. Runyon, d/b/a Bobbe's Private School, and respond to the complaint filed against them as follows:

MOTION TO DISMISS

This Court has no jurisdiction in this cause.

ANSWER

FIRST DEFENSE

No cause of action stated upon which any relief may be granted.

SECOND DEFENSE

Defendants do not operate a place of public accommodation. This is a private institution. There is no infringement upon any civil or constitutional rights.

THIRD DEFENSE

This is not a proper class action, as alleged in paragraph 3. Not all are similarly situated and may have adverse interests.

FOURTH DEFENSE

Defendants are without sufficient knowledge as to the allegations in paragraphs 4.a. and 4.b., and demand strict proof thereof.

Defendants are without sufficient knowledge as to the allegations in paragraphs 6.a. and 6.b., and demand strict proof thereof.

Defendants are without sufficient knowledge as to the allegations in paragraph 7.a. and 7.b., and demand strict proof thereof.

FIFTH DEFENSE

Defendants admit operating a private institution.

Defendants deny that interstate commerce is involved.

Deny that plaintiffs are entitled to any relief asked for, deny the allegations in paragraphs 8, 9 and 10.

WHEREFORE, defendants pray that this matter be dismissed with costs to defendants.

Respectfully submitted,

RUSSELL L. RUNYON
KATHERYNE E. RUNYON
D/B/A BOBBE'S PRIVATE SCHOOL
Defendants
By /s/
Counsel for Defendants

VAROUTSOS, KOUTOULAKOS,
ARTHUR AND HILTON
By /s/LOUIS KOUTOULAKOS
Counsel for Defendants
2054 14th Street North
Arlington, Va. 22201
527-0124

CERTIFICATE OF SERVICE

I hereby certify that on this 18 day of February, 1973, true copies hereof were mailed, postage prepaid, to Allison W. Brown, Jr., Esq., Suite 437, 300 Connecticut Avenue, N.W., Washington, D.C. 20008, and Robert M. Alexander, Esq., 2011 South Glebe Road, Arlington, Va. 22204, Attorneys for plaintiffs.

/s/LOUIS KOUTOULAKOS
Louis Koutoulakos
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

* * * * *

[Filed 3/12/73]

INTERROGATORIES

TO: Robert M. Alexander, Esq.
2011 South Glebe Road
Arlington, Va. 22204, and
Allison W. Brown, Jr., Esq.
Suite 437, 3000 Connecticut Ave., N.W.
Washington, D.C.

Attorneys for Plaintiffs

The plaintiffs, Raymond Gonzales and Margaret R. Gonzales, are requested to answer the following interrogatories propounded by defendants pursuant to Rule 33 of the Federal Rules of Civil Procedure, and to furnish defendants with a copy of such answer within 30 days from date of service hereof:

1. Please state which of the parents of Colin Gonzales it was who allegedly spoke to an agent or employee of Bobbe's Private School.

2. State whether or not one or both parents of Colin Gonzales participated in speaking allegedly to an agent or employee of Bobbe's Private School.

3. State the approximate time on June 15, 1969.

4. State the name or names of the employee or employees or agent or agents who were spoken to.

5. State whether or not any application for admission

was filed.

6. State whether or not an application for admission was given to either or both of the parents of Colin Gonzales.

7. State whether or not Colin Gonzales was enrolled in any school, and if so, when and what school, together with the address of same.

8. State whether or not Colin Gonzales is of the Negro race; if not, of what race.

RUSSELL L. RUNYON and
KATHERYNE E. RUNYON,
d/b/a BOBBE'S PRIVATE SCHOOL,
Defendants

By
Louis Koutoulakos
Counsel for Defendants

VAROUTSOS, KOUTOULAKOS,
ARTHUR AND HILTON

By
Counsel for Defendants
2054 14th Street North
Arlington, Va. 22201

CERTIFICATE OF SERVICE

I hereby certify that on this day of March, 1973, a true copy hereof was mailed to each attorney for the plaintiffs, Robert M. Alexander, Esq., 2011 South Glebe Road, Arlington, Va. 22204, and Allison W. Brown, Jr., Esq., Suite 437, 3000 Connecticut Avenue, N.W., Washington, D.C. 20008.

Louis Koutoulakos

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

* * * * *

[Filed 3/12/73]

INTERROGATORIES

TO: Robert M. Alexander, Esq.
2011 South Glebe Road
Arlington, Va. 22204, and
Allison W. Brown, Jr., Esq.
Suite 437, 3000 Connecticut Ave., N.W.
Washington, D.C. 20008

Attorneys for Plaintiffs

The plaintiffs, Curtis L. McCrary and Sandra McCrary, are requested to answer the following interrogatories propounded by defendants pursuant to Rule 33 of the Federal Rules of Civil Procedure, and to furnish defendants with a copy of such answer within 30 days from date of service hereof:

1. Please state the name of the agent or employee of Bobbe's Private School who allegedly was talked to about enrolling Michael McCrary.

2. Please state the time of day this was, morning, afternoon or evening.

3. State what the specific conversation was.

4. State what steps were taken, other than alleged in paragraph 6.a. of the complaint, regarding any enrollment.

5. State whether or not there were any attempts to enroll in any other school in the Metropolitan Area.

6. State whether or not Michael McCrary is enrolled in any other school, and if so, name and address of school, and date of enrollment.

7. State whether or not Curtis McCrary and/or Sandra McCrary did anything at all with reference to attempting to enroll Michael McCrary. If so, please enumerate the steps that were taken; whether or not any enrollment application was actually filled out and submitted; and if so, when.

8. Give the names and addresses of all similarly situated Negro citizens in whose behalf this action is being brought, and state the date or dates that this class as set out retained the attorneys for this suit.

RUSSELL L. RUNYON and
KATHERYNE E. RUNYON,
d/b/a BOBBE'S PRIVATE
SCHOOL,
Defendants

By
Louis Koutoulakos
Counsel for Defendants

VAROUTSOS, KOUTOULAKOS,
ARTHUR AND HILTON

By
Counsel for Defendants
2054 14th Street North
Arlington, Virginia 22201
527-0124

CERTIFICATE OF SERVICE

I hereby certify that on this day of March, 1973, a true copy hereof was mailed to each attorney for the plaintiffs,

Robert M. Alexander, Esq., 2011 South Glebe Road, Arlington, Va. 22204, and Allison W. Brown, Jr., Esq., Suite 437, 3000 Connecticut Avenue, N.W., Washington, D.C. 20008.

Louis Koutoulakos

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

[Title omitted in printing]

* * * * *

MOTION TO QUASH

Come now the defendants, by counsel, and move this Honorable Court to quash the interrogatories herein filed, and also the request to produce, on the following grounds:

1. That this Court does not have jurisdiction in case.

2. That this matter involves a private institution, and there is no legitimate civil rights issue.

/s/Louis Koutoulakos
Louis Koutoulakos
Counsel for Defendants
2054 14th Street North
Arlington, Va. 22201
527-0124

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

INTERROGATORIES

* * * * *

Counsel for Defendants

The defendants are herby requested to answer the following interrogatories, propounded by plaintiffs pursuant to Rule 33 of the Federal Rules of Civil Procedure, and to furnish plaintiffs with a copy of such answer within 30 days of the date of service hereof.

* * * * *

a. State all changes in this data which occurred through calendar 1972.

* * * * *

3. Describe with particularity the summer camp program operated by Bobbe's Private School.

4. Describe with particularity the physical facilities occupied by Bobbe's Private School and its summer camp, stating, among other things, the amounts of land, and size of buildings, including the number of rooms.

5. State the number and kind of motor vehicles owned or operated by Bobbe's Private School in connection with its school and summer camp program.

6. State when Bobbe's Private School commenced operations.

7. State when the Bobbe's Private School summer camp commenced operations.

8. State the average total enrollment of Bobbe's Private School for each academic year from the time the school commenced operations through 1972-1973.

9. State the average total enrollment of the summer camp operated by Bobbe's Private School for each year from the time the camp commenced operations through 1972.

10. State the number of Negroes enrolled in Bobbe's Private School for each academic year from the time the school commenced operations through 1972-1973.

11. State the name and last known address of each individual counted in the answer to Interrogatory 10.

12. State the number of Negroes enrolled in the summer camp operated by Bobbe's Private School for each year from the time the camp commenced operations through 1972.

13. State the name and last known address of each individual counted in the answer to Interrogatory 12.

14. State the current tuition charges for Bobbe's Private School.

15. State the current charges for attendance at the summer camp operated by Bobbe's Private School.

* * * * *

/s/ ROBERT M. ALEXANDER
Robert M. Alexander
2011 South Glebe Road
Arlington, Virginia 22204

Allison W. Brown, Jr.
Suite 437
3000 Connecticut Avenue, N.W.
Washington, D. C 20008

Attorneys for Plaintiffs

Of Counsel

Roderick V. O. Boggs
Washington Lawyers Committee for
Civil Rights Under Law
733–15th Street, N.W.
Washington, D. C. 20005

CERTIFICATE OF SERVICE

I hereby certify that on this *8th* day of March, 1973, copies of the foregoing Interrogatories were mailed, first class, postage prepaid to Louis Koutoulakos, Esq., 2054 14th Street North, Arlington, Virginia 22201, attorney for defendants.

/s/ ALLISON W. BROWN, JR.
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

MOTION TO AMEND AND ADD AS A DEFENSE

[Filed March 15, 1973]

Come now the defendants and move this Honorable Court to amend and add as a defense to their grounds of defense, with reference to plaintiffs Colin M. Gonzales, Raymond Gonzales and Margaret R. Gonzales, as follows:

1. That their action is barred by the statute of limitations and/or laches.

RUSSELL L. RUNYON and
KATHERYNE E. RUNYON, d/b/a
BOBBE'S PRIVATE SCHOOL

By /s/ LOUIS KOUTOULAKOS
Counsel for Defendants

VAROUTSOS, KOUTOULAKOS,
ARTHUR AND HILTON

By /s/ _____

Counsel for Defendants
2054-14th Street North
Arlington, Va. 22201
527-0124

CERTIFICATE OF SERVICE

I hereby certify that on this day of March, 1973, true copies hereof were mailed to Robert M. Alexander, Esq., 2011 South Glebe Road, Arlington, Va. 22204, and Allison W. Brown, Jr., Esq., Suite 437, 3000 Connecticut Ave., N.W., Washington, D. C. 20008.

/s/ LOUIS KOUTOULAKOS

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

ANSWERS TO INTERROGATORIES

[Filed April 11, 1973]

The defendants, Russell L. Runyon and Katheryn E. Runyon, d/b/a Bobbe's Private School, submit the following answers under oath to interrogatories propounded by plaintiffs:

* * * * *

3. A summer day camp operated during July and August for four year olds through ten year olds, offering horseback riding, archery, swimming, fishing, boating, hiking, cook-outs, and arts and crafts.

4. School land size: 31,000 square feet.
School building: 9,698 square feet (1 building with 15 rooms).
Camp land: 84 acres.
Camp buildings: 2,061 square feet (2 buildings with 7 rooms).

5. One 60 passenger school bus; one 2 ton truck; and 2 1/2 ton trucks.

6. 1958.

7. 1967.

8. 1958 - 5
1959 - 40
1960 through 1965 - 85
1966 through 1972 - 200

9. 1967 through 1972 - 100

10. None.

11. Not applicable.

12. None.

13. Not applicable.

14. From $27.00 weekly to $35.00 weekly.

15. $90.00 additional for summer to regular tuition.

* * * * *

- - - - - - - - - - - - -

/s/ RUSSELL L. RUNYON
Russell L. Runyon

/s/ KATHERYNE E. RUNYON
Katheryne E. Runyon
D/B/A Bobbe's Private School
Defendants

STATE OF VIRGINIA
COUNTY OF ARLINGTON, to-wit:

Subscribed and sworn to before me, the undersigned Notary Public in and for the County and State aforesaid, this *10th* day of April, 1973. My commission expires *April 5, 1976.*

/s/ MARY F. HARDING
Notary Public

VAROUTSOS, KOUTOULAKOS,
ARTHUR AND HILTON

By /s/ LOUIS KOUTOULAKOS
Counsel for Defendants
2054-14th Street North
Arlington, Va. 22201

CERTIFICATE OF SERVICE

I hereby certify that on this *10* day of April, 1973, true copies hereof were mailed, postage prepaid, to attorneys for plaintiffs, Robert M. Alexander, Esq., 2011 S. Glebe Rd., Arlington, Va. 22204, and Allison W. Brown, Jr., Esq., Suite 437, 3000 Connecticut Ave., N.W., Washington, D. C. 20008.

/s/ LOUIS KOUTOULAKOS
Louis Koutoulakos

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

ANSWERS OF RAYMOND GONZALES AND MARGARET R. GONZALES TO INTERROGATORIES

COMMONWEALTH OF VIRGINIA, SS:

[Filed April 15, 1975]

Raymond Gonzales and Margaret R Gonzales, plaintiffs herein, being first duly sworn according to law, on oath, give the following answers to the interrogatories propounded by defendants:

1. Raymond Gonzales.

2. One parent (Raymond Gonzales)

3. It was earlier than June 15. It now appears to have been in May 1969. The conversation was in the morning.

4. The name is unknown; it was a male who represented himself as authorized to speak for Bobbe's Private School concerning enrollment matters.

5. No application was filed, since after Raymond

Gonzales was told that his son would not be accepted because he is Negro, it appeared that it would be futile to even request an application form.

6. No.

7. He was enrolled in the years 1969-1970 and 1970-1971 at Congressional School, a private school located at 3229 Sleepy Hollow Road, Falls Church, Virginia. In 1971-1972 and 1972-1973 in St. Anthony's Catholic School, 3305 Glen Carlyn Road, Falls Church, Virginia.

8. Colin M. Gonzales is of the Negro race.

/s/ RAYMOND GONZALES
Raymond Gonzales

Subscribed and sworn to before me this *10th* day of April 1973.

/s/ WILLIAM B. PETERS
Notary Public

My Commission expires 10/5/73.

/s/ MARGARET R. GONZALES
Margaret R. Gonzales

Subscribed and sworn to before me this *10th* day of April 1973.

/s/ WILLIAM B. PETERS
Notary Public

My Commission expires 10/5/73.

CERTIFICATE OF SERVICE

I hereby certify that on this *13th* day of April 1973, I mailed a copy of the foregoing answers to interrogatories, first class, postage prepaid, to Louis Koutoulakos, Esq. 2054 14th Street North, Arlington, Virginia 22201, attorney for defendants.

/s/ ALLISON W. BROWN, JR.
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

ANSWERS OF CURTIS L. McCRARY
AND SANDRA McCRARY TO INTERROGATORIES

COMMONWEALTH OF VIRGINIA, SS:

Curtis L. McCrary and Sandra McCrary, plaintiffs herein, being first duly sworn according to law, on oath, give the following answers to the interrogatories propounded by the defendants:

1. The name is unknown; it was a male who identified himself as authorized to speak for the school concerning enrollment matters.

2. Morning.

3. Mrs. McCrary stated that she had heard about Bobbe's Private School and that she was interested in enrolling her son. She asked various questions about the school and how it operated. She inquired about, and received assurance that her son could attend even though he was under 3 years of age. She was told that there was an extra fee for a child who was not toilet trained. She was told about the school's policy of providing hot meals for the children, and of providing transportation if it was needed. Finally, Mrs. McCrary indicated that her son is a Negro, and asked whether this would be an obstacle to his attending the school, in other words, whether the school was integrated. The person with whom she spoke said he was sorry but they did not accept Negro children.

4. In view of the foregoing conversation, Mrs. McCrary assumed that she could not get an enrollment application from Bobbe's Private School and that any further efforts to enroll Michael would be futile.

5. Yes. inquiries were made to several other schools.

6. Michael is now enrolled in a home nursery operated by Mrs. Elbert Green, 2217 S. Oakland Drive, Arlington, Virginia. He has been enrolled there since September 1972.

7. The discussion over the telephone described in the answer to interrogatory No. 3, above, did not reach the stage where any mention was made of an enrollment application. Having been told that her son was unacceptable, Mrs. McCrary did not ask for an application form.

8. Objection is made to this interrogatory (misnumbered

as No. 7) on the advice of counsel who advise that the question of the nature of the class represented by the plaintiffs is a matter of law as discerned from the allegations of the complaint, and the question concerning retention of attorneys relates to privileged matter.

/s/ CURTIS L. McCRARY
Curtis L. McCrary

Subscribed and sworn to before me this *11* day of April 1973.

/s/ ARTHUR R. POWELL
Notary Public
State of Virginia
County of Arlington

My Commission expires July 28, 1975.

/s/ SANDRA McCRARY
Sandra McCrary

Subscribed and sworn to before me this *10* day of April 1973.

/s/ ARTHUR R. POWELL
Notary Public
State of Virginia
County of Arlington

My Commission expires July 28, 1975.

CERTIFICATE OF SERVICE

I hereby certify that on this *13th* day of April 1973,

I mailed a copy of the foregoing answers to interrogatories, first class, postage prepaid, to Louis Koutoulakos, Esq. 2054 14th Street North, Arlington, Virginia 22201, attorney for defendants.

/s/ ALLISON W. BROWN, JR.
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION
Civil Action Nos. 494-72-A and 495-72-A
[Title omitted in printing]

* * * * *

MEMORANDUM OPINION AND ORDER

[Filed April 16, 1973]

Defendants have moved to dismiss this action as brought by three of the named plaintiffs contending that the statute of limitations has run.[1] This is a civil rights action seeking redress for the violation of the plaintiffs' rights resulting from racial discrimination practiced by the defendants in connection with the admission of children to Bobbe's Private School. 42 U.S.C. § 1981.

[1] The Motion to Dismiss raised other issues, as to all of which the motion was denied in an oral ruling from the bench after argument on April 6, 1973. The issue of the statute of limitations was taken under advisement.

The injuries alleged and the relief sought in this case sound in tort. Although this is a 42 U.S.C. § 1981 rather than a § 1982 or § 1983 action, the applicable limitation is governed by *Almond v. Kent*, 459 F.2d 200 (4th Cir. 1972); *Allen v. Gifford* 462 F.2d 615 (4th Cir.), cert. denied, sub nom., *Gifford v. Allen*, 93 S. Ct. 128 (1972). In those cases Virginia's two year statute of limitations was applied to personal injury suits based on racial discrimination. It is apparent that the damages claimed by Raymond and Margaret Gonzales, as parents of Colin Gonzales, are barred since the two year statute of limitations began to run on June 15, 1969, more than two years before this suit was filed. The limitation period has not been tolled as to Colin Gonzales since it does begin to run until he, a minor, attains the age of majority. *Davenport v. Deseret Pharmaceutical Company*, 321 F. Supp. 659, 660 (E. D. Va. 1971).

Accordingly, the claim of Raymond and Margaret Gonzales for damages is dismissed. The requests for declaratory and injunctive relief, based as they are on alleged continuing wrongs, are not dismissed; and it is so ordered.

/s/ A. V. BRYAN, JR.
United States District Judge

Alexandria, Virginia
April 16th, 1973

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

MOTION TO INTERVENE AS PARTY DEFENDANT

[Filed June 15, 1973]

Upon the annexed affidavit, the prior proceedings had herein, and the memorandum of law submitted herewith, the undersigned, a non-profit corporate association representing six state private school organizations, 395 private schools with an enrollment of 176,000 studens and their respective parents, for itself, and as class representative of all other private schools having admission requirements limited in terms to a constitutionally significant ciass, moves this Court pursuant to Rules 23 and 24 of the Federal Rules of Civil Procedure for an order permitting its intervention as individual and class party defendant, and allowing the filing of its annexed answer to the complaint herein,

> . . . As a matter of right under Rule 24(a) in that the undersigned and each member of the class similarly situated has an interest in the transaction which is the subject of the action, is so situated that the disposition of the action may as a practical matter impair or impede their ability to protect that interest, and their interest herein is not adequately represented by existing parties; or
>
> . . . In any event, as a matter of sound judicial discretion under Rule 24(b) in that the particular defenses of this movant and the class of

schools and associations similarly situated raise questions of law and fact in common with the existing action and such intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

Respectfully submitted

Southern Independent School Association
P.O. Box 1675
Jackson, Mississippi 39205

By _____
Edith D. Hakola, Esq.
1400 N. Uhle Street
Arlington, Virginia 22201
703-522-5634

Of Counsel:

GEO. S. LEONARD, Esq. and
LEONARD, CLAMMER & FLUES
1225 Connecticut Avenue, N.W.
Washington, D. C.

June , 1973

CERTIFICATE OF SERVICE

Pursuant to Rules 5 and 24 of the Federal Rules of Civil Procedure, service of the foregoing motion, together with each of the papers therein referred to, has been duly made this day by first class mail prepaid upon the parties hereto, to wit, upon Robert M. Alexander, Esq., 2011 South Glebe Road, Arlington, Virginia 22204, Allison W. Brown, Jr., Esq. Suite 437, 3000 Connecticut Avenue, N.W.,

Washington, D. C. 20008, Louis Koutoulakos, 2054 14th Street North, Arlington, Virginia 22201.

_____
Edith D. Hakola

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

PLAINTIFFS' ANSWER TO COUNTERCLAIM

[Filed June 19, 1973]

Come now the Plaintiffs by Counsel and answer the Counterclaim filed herein by the Intervenor-Defendant as follows:

1. Plaintiffs admit the truth of the allegations contains in Paragraph 11 of said Counterclaim.

2. Plaintiffs deny the allegations contained in Paragraphs 12, 13, 14, 15, and 16 of said Counterclaim.

WHEREFORE, having fully answered said Counterclaim, Plaintiffs prays.

1. That said Counterclaim be dismissed.

2. And for such appropriate relief against the Intervenor-Defendant deemed meet and just.

Respectfully submitted,

/s/ ROBERT M. ALEXANDER
Robert M. Alexander
Attorney for Plaintiffs
2011 South Glebe Road
Arlington, Virginia 22204

CERTIFICATE OF SERVICE

Copies of the foregoing Answer were mailed to Louis Koutoulakos, Esq., Edith D. Hakola, Wesley D. McDonald and B. Austin Newton, Defense Counsel in consolidated cases 494-72-A & 495-72-A, this 18th day of June, 1973.

/s/ ROBERT M. ALEXANDER
Robert M. Alexander

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

ANSWER OF INTERVENOR

[Filed June 21, 1973]

For its answer to the complaint herein, intervenor-defendant Southern Independent School Association,

FIRST, SECOND, THIRD AND
FIFTH DEFENSES

Adopts as if set forth herein in full, the First, Second, Third and Fifth defenses pleaded in the answer of the individual defendants.

FOURTH DEFENSE

1. Denies that the private schools represented by intervenor are places of public accomodation, or are engaged in or affect interstate commerce or, by definition or policy intendment, come within the terms of 42 U.S.C. 2000a or any other section of the Civil Rights statutes, or that admission thereto constitutes a contract within the meaning of 42 U.S.C. 1981, or that white, black, or any other children have a right of compulsory admission thereto.

2. Denies knowledge or information sufficient to form a belief as to the alleged custom, practice or policy of the defendants and further avers that with respect to private schools of the class represented by intervenor, the selection or rejection of applicants constitutes an exercise of the freedom of association of the respective parents acting in their private capacity as citizens and is a protected expression under the First Amendment to the Constitution of the United States of a reasonable belief that homogeneity in a student body is educationally advantageous.

3. Denies knowledge or information sufficient to form a belief as to whether any class of similarly situated Negro citizens exists, or that the claims of these plaintiffs are typical of the claims of the class they purport to represent.

4.-7. Denies knowledge or information sufficient to form

a belief with respect to the allegations contained in the corresponding paragraphs of the complaint.

8.–10. Denies the allegations contained in the corresponding paragraphs of the complaint and specifically repeats the denials set forth in paragraph 1 hereof.

COUNTERCLAIM

11. Jurisdiction of this court over the federal question involved is invoked pursuant to 28 U.S.C. §§ 1331 and 2201, and also pursuant to the pendent jurisdiction of the court arising by virtue of the principal action. The amount in controversy exceeds $10,000 exclusive of interest and costs.

12. Intervenor is an incorporated, nonprofit association of six state private school associations in Virginia, North Carolina, South Carolina, Alabama, Mississippi and Louisiana and of otherwise unaffiliated private schools located in the State of Georgia. Intervenor represents 395 private schools having an enrollment of 175,000 students. Such schools are supported and maintained in principal part by tuition charges paid by the parents of the said students, no part of which diminishes the taxes which the same parents are required to pay for the support of public education. No such school is created or administered by public authority nor is located in an area lacking effective public educational facilities. Admission to all such schools is permitted to applicants only in the discretion of the school authorities and no individual of any race, creed or sex has any right to compulsory admission.

13. In organization, financing and legal contemplation, such schools are believed to be representative of the class of all private educational organizations which limit instruction to student groups selected on the basis of locally determined

but constitutionally significant classifications.

14. The private schools represented by intervenor have on the average achieved academic levels of student learning which, measured on the basis of nationally accepted tests, are substantially higher than the levels achieved in comparable open public school classes either in their immediate area or as measured against national public school averages. Such scholastic results have been achieved at per pupil capital and operating costs well below comparable costs in the public school systems. Such schools provide to their students patriotic and religious observances which are desired by the parents concerned but are no longer permitted in public schools. Such schools are substantially free of vandalism, theft and other petty crimes which reportedly characterize integrated public school systems. The scholastic and disciplinary results achieved by such private schools are in major part the scientifically demonstrable effect of limiting admission to homogeneous student groups having compatible learning requirements.

15. The parents of the students in the schools represented by intervenor have reasonable cause to believe that the enrollment of their children therein will result in an improved education, and such parents are guaranteed the freedom to so express themselves by peaceful withdrawal of their children form public schools, under the Second and Third Clauses of the First Amendment.

16. Plaintiffs and their class, by paragraph 1 of the prayer of their complaint for declarative judgment seek the aid of this court to deprive such parents and children in the schools represented by intervenor of the Constitutional rights so referred to, such deprivation would in turn adversely affect the viability and value of the private schools amounting to an unconstitutional deprivation

of property. Accordingly, there exists an actual controversy between classes represented by plaintiff and intervenor with respect thereto.

WHEREFORE, intervenor prays a judgment of this court,

1. Dismissing the complaint, and

2. Affirmatively declaring the rights of the parents parents represented by intervenor to support and maintain at their own cost private schools limiting admission to a single race or other constitutionally significant student group.

Respectfully submitted,

Southern Independent School Association
P. O. Box 1675
Jackson, Mississippi 39202

By _____
Counsel
Edith D. Hakola
1400 N. Uhle Street
Arlington, Virginia 22201
522-5634

Of Counsel:

Geo. S. Leonard
Leonard, Clammer & Flues
1225 Connecticut Avenue, N.W.
Washington, D. C. 20036

CERTIFICATE OF SERVICE

Pursuant to Rules 5 and 24 of the Federal Rules of Civil Procedure, service of the foregoing Answer has been duly made this day by first class mail prepaid upon the parties hereto, to wit, upon Robert M. Alexander, Esq., 2011 South Glebe Road, Arlington, Virginia 22204, Allison W. Brown, Jr., Esq., Suite 437, 3000 Connecticut Avenue, N.W., Washington, D. C. 20008, Louis Koutoulakos, Esq., 2054 14th Street North, Arlington, Virginia 22201.

_____
Edith D. Hakola

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

ORDER

[Filed July 9, 1973]

Upon consideration of the Motion to Intervene of the Southern Independent School Association and Affidavit of William J. Simmons, its president, and Memorandum in Support of Application for Intervention, and there being no objection by parties plaintiff or defendant to such intervention, it is,

ORDERED that the Southern Independent School Association be and is permitted to intervene as an individual and class party defendant in this action; and it is further,

ORDERED that the Answer of the Southern Independent School Association be filed and Answer made thereto; and it is further,

ORDERED that George Leonard, Esq. is admitted as counsel *pro hac vice* for the Southern Independent School Association in this action.

/s/ A. V. BRYAN, JR.
Albert V. Bryan, Jr.,
Judge

/s/ EDITH D. HAKOLA
Edith D. Hakola, Esq.
1400 N. Uhle Street
Arlington, Virginia 22201
703-522-5634
Counsel for Intervening Party

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

STIPULATION

[Filed July 13, 1973]

1. A substantial proportion of the schools represented by intervenor deny admission to applicants of the Negro race.

2. The schools represednted by intervenor admit applicants only in the discretion of the school authorities.

3. The schools represented by intervenor are privately owned, financially supported by tuition paid by the parents of the students and, in some cases, supplementary private gifts.

4. The schools represented by intervenors are located in areas having cost-free, desegregated public education available to all children, and the parents of the students in schools represented by intervenor are taxpayers who pay their proportionate share of federal, state and local taxes for the maintenance of such public system of education.

5. The sole basis of jurisdiction asserted by plaintiffs in this action is 42 U.S.C. 1981.

(July 13, 1973) /s/ ALLISON W. BROWN, JR.
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Title omitted in printing]

* * * * *

ORDER

[Filed September 14, 1973]

Upon consideration of the Motion to Compel Production of Information and to Amend the Court's Judgment filed by plaintiffs herein, it is,

ORDERED that the Southern Independent School Association, intervenor-defendent, shall within *30* days from the date of this order file with the Court, and serve upon the parties hereto, a list of the names and addresses of the 395 schools that are represented by said Association in this action; and it is further,

ORDERED that said list shall thereafter be incorporated in this Court's judgment dated July 27, 1973, and that the schools so listed shall be bound by said judgment.

/s/ A. V. BRYAN, JR.
United States District Judge

Date: September 14, 1973.

/s/ ROBERT M. ALEXANDER
Counsel for Plaintiffs

SEEN AND AGREED:

_____
Counsel for Intervenor

_____
Counsel for Defendant

SUPPLEMENT TO MEMORANDUM OPINION AND ORDERS
DATED JULY 27, 1973

1. The counterclaim of intervenor is dismissed for failure to state a cause of action.

2. The proffered testimony of intervenor described on page 8 of said Memorandum Opinion was admitted into evidence subject to the Court's reserved ruling on relevance.

3. Intervenor shall furnish the Clerk with the names of the schools in the component associations of the Southern Independent School Association within 30 days.

And it is so ordered.

United States District Judge

Alexandria, Virginia
September 24, 1973

A True Copy, Teste:
W. Farley Powers, Jr., Clerk

By _____
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

Civil Action Nos. 494-72-A and 495-72-A

[Title omitted in printing]

* * * * *

MEMORANDUM OPINION AND ORDER

[Filed July 27, 1973]

On May 17, 1954, the Supreme Court decided *Brown v. Board of Education*, 347 U.S. 483 (1954). The same year Fairfax-Brewster School was founded. It commenced

operations in 1955. In 1958 Bobbe's Private School commenced operations. Neither school receives and assistance, financial or otherwise, from any state, local or federal agency; and each relies entirely on funds derived from tuition paid by students to support its operations. In 1956 Fairfax-Brewster commenced operation of a summer day camp and in 1967 Bobbe's did the same thing.

The enrollment at Fairfax-Brewster School grew from an average of 21 in the first year, 1955-56, to 223 in the year 1972-73. The rise in enrollment has generally been increasing except for the year 1969-70 when it dropped to 177 from the previous year's 208. The day camp's enrollment records are not available prior to 1962, but it shows a growth from 21 that year to 236 in the summer of 1972. An unusually large increase was shown in 1969 over the previous year, but this dropped back in 1970.

Bobbe's School grew from 5 in 1958 to an average of 200 in the years 1966-72. The day camp has averaged 100 students per year since its commencement. Neither school has ever had a black enrolled at either its day camp or school. Both schools require submission of an application form, a medical certificate as to the child's health, and a personal interview with the parties.

In early May of 1969, in response to an advertisement appearing in the "yellow pages" of the telephone directory similar to Pltf's Ex. 3, the parents of Colin M. Gonzales, both of whom are black, as is Colin, telephoned and then visited the school where they were shown around. Being pleased with what they saw, they completed, on forms then furnished them by the school, an application for the day camp and later a medical certificate prepared by a doctor. They subsequently submitted these to the school

with a check for either $15 or $20. On May 16, 1969, Mr. and Mrs. Gonzales received the medical certificate and check in the mail with a form letter from Fairfax-Brewster (Pltf's Ex. 2) stating that the school was "unable to accommodate the application." No reason was given. Upon receipt of the letter Mr. Gonzales called the school, spoke to a person who identified himself as Captain Reiss,[1] and, in response to his inquiry as to why his son's application was rejected, was told "we are not integrated." Both Robert S. Reiss and Stuart Reiss denied any such conversation. They then stated that Colin, whom they believed was primarily interested in entering the first grade, was rejected, not on the basis of his race, but because his application lacked supporting data as to his previous schooling. Moreover, knowing that Colin had previously attended Crossroads Day Nursery, they claimed he would not qualify for the first grade. Consequently, since eligibility for the day camp was contingent on one's being qualified for the first grade, they felt it would be unfair to allow Colin to enter the day camp and then have to be withdrawn before the commencement of the academic year. In conclusion, the three Reisses all denied that it was the school or day camp's policy to exclude an applicant because of his race. The Court rejects this testimony as unbelievable and finds that the reason for the rejection was because Colin was black.

Subsequent to his son's rejection by Fairfax-Brewster, Mr. Gonzales telephoned Bobbe's School where, in answer to an inquiry as to whether it was integrated, he was told

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[1] Capt. Stuart A. Reiss is the Chairman of the Board while his son, Robert S. Reiss, is the Administrative Director, and his daughter-in-law, Olga M. Reiss, the registrar.

that only members of the Caucasian race were accepted. He filed no formal application with Bobbe's School.

Application was ultimately made for Colin at Congressional School, a non-public school, where he was accepted and did well.

In August, 1972, in response to an advertisement in the "yellow pages" of the telephone directory, Mrs. Sandra McCrary, who is black, called Bobbe's Private School to enroll her 2 year old son, Michael, in nursery school. After first inquiring as to the price, policies, meals, transportation and facilities for "toilet training," she asked if the school was integrated. Upon received a negative reply, she asked if the school accepted black children. The answer to this question was also "no." She filed no formal application with Bobbe's.

Bobbe's denied receiving telephone calls from either Mr. Gonzales or Mrs. McCrary; stated that it was not the policy of the school to exclude anyone because of race; denied that the school has ever told anyone that the school was not integrated; and stated that no one can be considered without a personal interview with the applicant and his parents or without a formal application being submitted with an accompanying medical certificate. Bobbe's introduced further testimony that no black child had ever applied for enrollment.

The Court finds that the calls were made to Bobbe's and that both Colin Gonzales and Michael McCrary were denied admission because they were black. It is of no moment that no formal application was filed. It would be ridiculous to require this of the plaintiffs after they had effectively been told it was useless.

The policy of the schools with regard to exclusion of blacks was corroborated by Mrs. Bryant and Mr. Brooks. The former testified that in 1972 she telephone Fairfax-Brewster and Bobbe's School to inquire about their admissions policies. She testified that both schools told her they were not integrated and would not accept blacks. Mr. Brooks, a deputy Equal Employment Opportunity Commission officer with the Navy and Mrs. McCrary's supervisor, testified that after he became aware of the McCrary's allegations as raised in this suit against Bobbe's he decided to call for himself. He stated that during his telephone conversation of May 31, 1973, with a Mr. Gates at Bobbe's, he asked whether the school was accredited and if it was integrated. Upon receiving a negative response to the latter question Brooks further asked if blacks were admitted. Again he was told "no."

Colin Gonzales has filed an action against Fairfax-Brewster. Mr. and Mrs. McCrary, Michael McCrary, and Colin Gonzales have filed an action against Bobbe's. The sole basis for the actions is 42 U.S.C. § 1981.[2] The Southern Independent School Association intervened as a party-defendant in the action against Bobbe's, asserting that it represents "non-profit, private white schools in seven states and the class of all similarly situated schools and their associated students and parents."

The intervenor takes a different tack from that of the principal defendants. It concedes that race is a factor in its policies of exclusiveness, but says that 42 U.S.C.

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[2]Originally 42 U.S.C. § 2000a was alleged as a basis for the actions. This was withdrawn prior to trial.

§ 1981 cannot be used to compel admission of a black child to a white school of the type it represents, and prays an adjudication to that effect.

The actions were consolidated and tried on July 16 and 17, 1973.

No determination was made prior to trial that the actions might be maintained as a class action, either as asserted by the plaintiff or the intervenor; and the Court does not feel it should be so maintained. Accordingly the decision is only binding on the named plaintiffs, the named defendants, and those schools which actually comprise the intervenor.

42 U.S.C. § 1981 reads as follows:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

If read literally the act covers these plaintiffs, who have been denied their right to make a contract with the defendants because they are not white. That it is to be read literally is no longer open to question. In considering 42 U.S.C. § 1982, the Supreme Court has said that ". . . Congress meant exactly what it said." *Jones v. Mayer Co.*, 392 U.S. 409, 422 (1968). Interrelated as § 1981 and § 1982 are, there is no reason to

think Congress meant any less when it enacted § 1981. *Tillman v. Wheaton-Haven Recreation Ass'n.*, 41 U.S.L.W. 4311 (February 27, 1973). The purpose of both is to prohibit all racial discrimination against non-whites,[3] whether that infringement be "by 'State or local law,'" or "by 'custom, or prejudice.' " *Jones v. Mayer Co.*, *supra*, at 423. In other words, no state action is necessary to invoke § 1981.

Although both schools claim to have strictly established criteria for enrollment, the end result of their admission policies as applied to both Colin and Michael evidences no "plan or purpose of exclusiveness" for selection of students *"other than race."* (Emphasis added.) *Sullivan v. Little Hunting Park*, 396 U.S. 229, 236 (1969). This disposes of the argument that these were "truly private" schools since the opportunity to attend these schools was open to every white child. *Tillman*, at 4313 and 4314. It is difficult to accept the defendants' argument that the plaintiffs may not have been qualified to meet their schools' high standards. This answer is certainly unavailing with regard to the day camp or nursery and is suspect insofar as the first grade is concerned since Colin Gonzales, because of his

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[3] The analogy to all black academies, all Chinese schools, and all rabbinical schools is inapposite. These institutions don't fall within the proscription of § 1981. Whatever else may be said of their policies, those institutions are free to discriminate against whites, or against other non-whites if whites are similarly discriminated against, without running afoul of § 1981.

race, was never given the opportunity to demonstrate that he was qualified.[4]

Intervenor proffered testimony which would establish:

1. That intervenor parents act rationally in holding a belief that segregation is desirable in education in light of the performance record of these schools and current scientific theory; and

2. That the intervenor schools are academically successful beyond the national public school average and have low disciplinary problems, both of which are causally related to segregated policies.

The Court finds this testimony to be irrelevant to the issue in these actions, feeling that such testimony, as a defense to outlawed policies of segregation, embodies a concept rejected in *Brown v. Board of Education, supra.*

Intervenor has seized on certain dicta of the Supreme Court in *Norwood v. Harrison*, 41 U.S.L.W. 5094 (June 25, 1973), which states that "private bias" is not proscribed by the Constitution and that "private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment. . . ." Conforting as these words may be to the defendants out of

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[4]The defendant Fairfax-Brewster points to page 2 of its handbook (Def's Ex. 2) to indicate that Colin Gonzales should have submitted a report card and other pertinent records from his previous school, the omission of which was a ground for his rejection. The same page of the handbook provides for Entrance Examination if previous scholastic records are inadequate. Colin was denied the opportunity to take this examination since he was never told that his scholastic record inadequacy was the reason for his rejection.

context, it must be pointed out that § 1981 was not there involved; that *Jones v. Mayer Co.* was cited to the contrary as an example of private discrimination made unlawful by Congress; and that the opinion specifically points out that "[t] his case does not raise any question as to the right of citizens to maintain private schools with admission limited to students of particular national origins, race or religion. . . ." *Norwood v. Harrison,* at 5095. Moreover, although perhaps not legally significant, as a practical consideration, it is inconceivable that the opinion in the case would have attained the indicated degree of unanimity if it stood for the proposition urged by the intervenor. Accordingly the Court feels *Norwood* is not authority for that proposition.

While no relief is sought under 42 U.S.C. § 2000a et seq., it seems appropriate to point out that, in the Court's view, this act is not a limitation on § 1981, and consequently the exemption of 42 U.S.C. § 2000a(e) for private establishments does not apply in this case. Moreover, as indicated before, *Sullivan v. Little Hunting Park* has abolished traditional notions of what is "private" insofar as these types of actions are concerned.

Plaintiffs are accordingly entitled to the relief requested, namely:

A. An adjudication that the policies with respect to the admission of students to defendants' day camp and school, of discriminating on the basis of race or color, are a violation of 42 U.S.C. § 1981.

B. A permanent injunction against the defendants and intervenor, their agents and those acting in concert with them, prohibiting them from following the policies described in Paragraph A.

C. An award of compensatory[5] damages for the embarrassment, humilation and mental anguish which the Court finds to have been suffered by the plaintiffs as follows:

1.	In favor of Colin Gonzales:	
	(a) Against Fairfax-Brewster School	$2,000
	(b) Against Bobbe's School	500
2.	In favor of Michael McCrary against Bobbe's School	1,000
3.	In favor of Sandra McCrary and Curtis L. McCrary against Bobbe's School	2,000

D. An award of attorney's fees as follows:

1.	Against Fairfax-Brewster School	$1,000
2.	Against Bobbe's School	1,000

E. Their costs.

And it is so ordered.

/s/ A. V. BRYAN, JR.
United States District Judge

Alexandria, Virginia
July 27th, 1973

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[5]Punitive damages are not awarded. While the defendants' acts have here been declared improper, insofar as the Court can determine similar acts have not heretofore been so declared. Accordingly the defendants cannot be said to have acted recklessly or willfully in disregard of clear existing law.

Plaintiffs' Exhibit No. 1

BOBBE'S PRIVATE SCHOOL
820 SOUTH CARLYN SPRING ROAD
ARLINGTON, VIRGINIA 22204
671-6545

I _____ GIVE TO
WILLIAM C. GATES OR KATHERYNE B.
OR RUSSELL L. RUNYON PERMISSION
TO TAKE MY CHILD _____
TO THE CHILD'S PHYSICIAN OR ANY
HOSPITAL FOR EMERGENCY TREATMENT
IN THE EVENT OF MY ABSENCE

_____
PARENT'S SIGNATURE

Plaintiffs' Exhibit No. 3

BOBBE'S PRIVATE SCHOOL

820 SOUTH CARLYN SPRING ROAD
ARLINGTON, VIRGINIA 22204
671-6545

★

MRS. KATHERINE B. RUNYON, *Director*

Founded 1958

★

MODERN BRICK FIRE-PROOF BUILDING
OPEN YEAR 'ROUND
ALL DAY — HALF DAY PROGRAMS
INDIVIDUAL — AGE NURSERY GROUPS
SUMMER CAMP PROGRAM
COMPLETELY AIR CONDITIONED

LICENSED BY
FAIRFAX COUNTY and STATE

TRANSPORTATION OFFERED

BOBBE'S PHILOSOPHY

Bobbe's School is more than supervised play. It provides the guidance for young children's need for the maximum development of their abilities and to make this for every child a good year of living and learning.

ENROLLMENT PROCEDURES

REGISTRATION:

Before an enrollment can be accepted, a personal interview between the administrative office, the parents and the child is necessary. Registration fee must be paid before application can be processed.

PHYSICAL EXAMINTION:

A physical examination form, signed by the child's physician, must be submitted to the office by the child's first day of school.

BOOKS:

Grade school children purchase or rent their own textbooks and workbooks. At the time of registration, the person conducting the interview will let you know whether the books will be for sale or rent.

PROGRAMS OFFERED

NURSERY PROGRAMS — Ages 2 and 3

- ½ day program.
- All-day program and day care.

PREP-KINDERGARTEN — Age 4

- ½ day educational program.
- All-day school includes educational program.

KINDERGARTEN — Age 5

- ½ day educational program.
- All-day school includes educational program.

FIRST GRADE AGE LIMITS:

In general, students will be accepted in first grade if their sixth birthday occurs before December 31.

SECOND GRADE AGE LIMITS:

In general, students will be accepted in second grade if their seventh birthday occurs before December 31; and have completed first grade. An entrance examination will be required also.

GENERAL INFORMATION

VISITING CLASSES:

If it is necessary for a parent to visit a class, a definite appointment, convenient to the class schedule, must be made through the office. Before visiting the class, the parent will check in with the office, and his arrival will be announced to the teacher. Visits in general should be limited to 20 minutes.

SICK CHILDREN:

Children with bad colds or contagious diseases must remain at home. If a child becomes ill after arriving at school, the parents will be asked to take him home as soon as possible. The school should be notified of a contagious disease. A Doctor's certificate is necessary to re-enter school after a contagious disease.

TOYS:

The school advises that no toys be brought to school, except for special "Show and Tell" days or for other designated classroom projects. This day will be designated by each teacher.

BIRTHDAYS:

If a child wishes to celebrate his birthday at school, the parents may bring the necessary refreshments and the school will hold the party in the cafeteria. At least three days notice should be given to the office.

OFFICE HOURS FOR ENROLLMENT:

9:00 A.M. to 11:00 A.M.
12:00 P.M. to 2:00 P.M. (Appointment only)
5:30 P.M. to 6:00 P.M. (Appointment only)

SCHOOL HOURS:

7:00 to 5:50 P.M.
5:50 to 6:00 P.M. (Grace period)
After 6:00 P.M. (Late charge)

Grace period should not be used except for emergencies only.

TUITION:

Tuition is paid on a weekly installment. Tuition is paid on Mondays only. If tuition is not paid on Mondays, a $1.00 a day service charge is required. At the time the application is taken, the child's first three weeks of tuition must be paid: which will apply to his first three weeks of school. Tuition becomes due weekly after the first week of school. This leaves the school holding two weeks of tuition which will go for the child's last two weeks of school. Tuition is not refunded or adjusted for any reason. Tuition fees will be discussed at the time of the interview, as it varies for the different age groups.

Tuition includes snacks, a hot meal and general school supplies.

INSURANCE:

The school offers two insurance programs: a school-time protection and a twenty-four hour protection.

WITHDRAWAL:

In case of withdrawal, two week's notice must be given to the office, on Mondays only, otherwise parents will forfeit two week's tuition.

CLOTHING AND EQUIPMENT:

The school does not require a uniform. Students will dress in a neat and appropriate manner. Pre-school children should wear general play clothes.

All outer clothing, accessories and other equipment must be marked with the child's name.

CALENDAR HOLIDAYS

January—New Year's Day.
February—George Washington's Birthday.
Easter—Good Friday and Easter Monday.
May—Memorial Day.
July—Independence Day.
September—Labor Day.
November—Veteran's Day.
November—The last Thursday and Friday of the month for Thanksgiving Holidays.
December—Christmas Day and the day before or after, depending on Chirstmas Day.

If a Holiday falls on Saturday, school will be closed on Friday.

If a Holiday falls on Sunday, school will be closed on Monday.

NOTE: If it becomes necessary to alter this notice, a supplementary notice will be posted.

SCHOOL IS NEVER CLOSED DUE TO THE WEATHER.

CAMP

CAMP is an extra fee to your basic weekly tuition and is offered for children, four years and older, during the summer months. Even though the school is open for the working parents, year-round, there is an additional charge for a child to go to camp. Fees and programs for Summer Camp can be discussed at the time of application. Illustrations of camp activities are on the following pages.

APPLICATION

Type or Print

Child's Name: .....
Address: .....
.....
Age: ..... Birth: .....
Home Phone: .....
Mother's Name: .....
Employed By: .....
Working Hours: .....
Bus. Phone: .....
Father's Name: .....
Employed By: .....
Working Hours: .....
Bus. Phone: .....
Emergency Name: .....
Address: .....
Phone: .....
Relationship: .....
Doctor's Name: .....
Address: .....
Phone: .....
Parents Signature .....
Date: .....

Doctor's certificate of good health and shot record for .....
(Child's Name)

Polio Shots ..... Date
DPT Shots ..... Date
Smallpox Vac. ..... Date
Measles Vac. ..... Date
TB Test ..... Date
Allergies .....
.....
.....
Childhood Diseases .....
.....
.....

The above child is in good health and immunization are up to date.

.....
(Physician Signature)

Intervenor's Exhibit No. 1

EMERGENCY SCHOOL AID ACT OF 1970

EXTRACT OF

HEARINGS

BEFORE THE

GENERAL SUBCOMMITTEE ON EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

ON

H.R. 17846 and Related Bills

BILLS TO ASSIST SCHOOL DISTRICTS TO MEET SPECIAL PROBLEMS INCIDENT TO DESEGREGATION IN ELEMENTARY AND SECONDARY SCHOOLS AND TO PROVIDE FINANCIAL ASSISTANCE TO IMPROVE EDUCATION IN RACIALLY IMPACTED AREAS, AND FOR OTHER PURPOSES

HEARINGS HELD IN WASHINGTON, D.C., JUNE 8, 15, 17, 18, 24, 25, 29, 30; JULY 1, 6, 7, 8, 16; AND SEPTEMBER 23, 1970.

(Not Printed at Government Expense)

U.S. GOVERNMENT PRINTING OFFICE

418-016 O WASHINGTON : 1970

BEST COPY AVAILABLE

STATEMENT OF DR. ERNEST VAN DEN HAAG, PROFESSOR OF SOCIAL PHILOSOPHY, NEW YORK UNIVERSITY

Dr. VAN DEN HAAG. Let me express my gratitude for being given the opportunity to be heard on the very important bill before you.

(The prepared statement of Dr. van den Haag follows:)

STATEMENT OF DR. ERNEST VAN DEN HAAG, PROFESSOR OF SOCIAL PHILOSOPHY, NEW YORK UNIVERSITY

I. INTRODUCTION

Mr. Chairman and members of the Committee, my name is Ernest van den Haag. I am a Professor of Social Philosophy at New York University, a lecturer at the New School for Social Research in psychology and sociology, and a psychoanalyst in private practice. I received an M.A. degree from the University of Iowa, and a Ph. D. degree from New York University. I also have studied in Europe, at the Sorbonne (the University of Paris), the University of Florence, and the University of Naples. I have lectured at Harvard and Yale Universities. I am a member of the Society of Applied Psychoanalysis, Fellow American Sociological Association, Royal Economic Society, and New York Academy of Sciences; I am a Guggenheim Fellow (1957).

I am the author of *Education as an Industry* and the co-author of *The Fabric of Society*. I have published nearly 70 scientific articles in my fields, appearing in professional journals and encyclopedias as well as chapters in books, *e.g.*, "Psychoanalysis and its Descendents," appearing in *Psychoanalysis, Scientific Method and Philosophy*, and "Genuine and Spurious Integration," appearing in *Psychoanalysis and the Social Sciences*. I have delivered the Freud Memorial Lecture to the Philadelphia Psycho-analytic Association ("Psychoanalysis and Utopia").

My work mostly concerns study of the relationship of groups. Research in the field of social dynamics analyzes the causes of the formation of groups (including classroom groups or student groups) and how group members relate to others. Such studies are directly applicable to predict the educational result of compulsory congregation in schools.

On the basis of those studies, I appear today to question the validity of the purpose which the Emergency School Aid Act of 1970, H.R. 17846, is intended to serve. Essentially the bill seeks to end what is called racial isolation—defined as more than 50% minority attendance in a single classroom. It is the purpose of the bill as expressed in Section 2 to improve the quality of education in the United States by increasing the degree of compulsory classroom integration between the races. But it is simply assumed, without actual evidence, that integration will be educationally and psychologically beneficial.

This legislation before the Committee assumes fundamentally that academically and socially effective classroom groups can be formed by putting black and white students together in larger numbers in a single classroom regardless of their wishes and that this will improve their education and decrease the differences as well as hostilities which now exist between them. Yet such an enforced congregation of two identifiable racial groups, one deprived in relation to the other, does not diminish, but rather increases the divisive forces which now exist between these students and the consequent increase in classroom tension leads to a substantial decrease in the educational accomplishment of both groups and multiplies the disciplinary problems which detract from the essential student attention required for effective study.

If such integration is compelled, as this bill proposes to do, it will injure rather than assist the future educational accomplishment of the nation's schools.

The blacks who will feel humiliated by their low performance relative to white children—be it owed to genetic, economic, subcultural or family conditions—are

likely to react with redoubled hostility to white pupils, teachers and institutions—to schooling as a whole. It will be labeled "irrelevant."

II. GROUP MEMBERSHIP AND INDIVIDUAL IDENTITY

(1) Every individual needs to identify with a particular group. Such an identification is essential for the development of personality. This is clearly expressed by Dr. Glaister A. Elmer (Michigan State College) in "Identification as a Social Concept" (*Sociology and Social Research*, Vol. 39, No. 2 (1954), pp. 103–109).

"The social psychologists, however, '. . . should start first by relating the individual to his reference and membership groups and then proceed to the finer details of personality problems.' . . . In the building of group formation, the real identifications of individual beliefs are [illegible] solidarity is generated in them as a natural process which manifests itself in actual behavior. In other words, as a group is formed or as individuals become members of the group, the social process of integration is taking place. Besides the individual members of the group, the integration binds the social values and goals, the psychological [illegible] in group symbols with which the individual members become identified. The social identification which evolves thus constitutes the basis of the group solidarity from which results observable, measurable behavior.

". . . There must be a personal consciousness of 'belonging' or 'being a part' which is reflected in the opinions and behavior of the persons concerned. Group membership identification implies not an individual's reaction toward a group, but his reaction as a functioning element of the group."

(2) Men react selectively to their fellow men. This preferential association is based upon observable differences, among them overt physical differences and similarities, which form the focal point for group orientation and group identification. Professor George A. Lundberg (University of Washington; past president of the American Sociological Association) writes in "Some Neglected Aspects of the 'Minorities' Problem" (*Modern Age*, Summer, 1958, pp. 285–297):

". . . In every society men react selectively to their fellow men, in the sense of seeking the association of some and avoiding the association of others. Selective association is necessarily based on some observable differences between those whose association we seek and those whose association we avoid. The differences which are the basis of selective association are of an indefinitely large variety, of all degrees of visibility and subtlety, and vastly different in social consequences. Sex, age, marital condition, religion, socioeconomic status, color, size, shape, health, morals, birth, breeding, and B.O.—the list of differences is endless and varied, but all the items have this in common: (1) they are observable and (2) they are *significant* differences to those who react selectively to people with the characteristics in question. It is, therefore, wholly absurd to try to ignore, deny or talk out of existence those differences just because we do not approve of some of their social results. . ."

Professor Lundberg with an associate also studied high school students in Seattle, Washington, to find out the determinants of their preferential associations in leadership, work, dating, and friendship. Lundberg reported in "Selective Association Among Ethnic Groups in a High School Population" (*American Sociological Review*, Vol. 17, No. 1 (1952)). He found:

". . . every ethnic group showed a preference for its own members in each of the four relationships covered by the question.

". . . ethnocentrism or prejudice is not confined to the majority of the dominant group. . .

". . . A certain amount of ethnocentrism is a normal and necessary ingredient of all group life, *i.e.*, it is the basic characteristic that differentiates one group from another and thus is fundamental to social structure. Ethnocentrism ('discrimination,' 'prejudice') is, therefore, not in itself necessarily to be regarded as a problem. It is rather a question of determining *what do area* of it (a) is functional for social survival and satisfaction under given conditions, or at least (b) is

not regarded by a society as a problem in the sense of requiring community action. The amount of discrimination that has been shown to exist in the present study, for example, is not incompatible with the peaceful and efficient functioning of the institution in question . . ."

There are a substantial number of studies reported in social science literature which indicate that the attitudes reported in Landberg's study of Seattle, Washington, are not confined to that particular city. Indeed, social scientists find in all areas where groups of diverse origin and appearance come into contact, some degree of race preference and selective association is manifested by the various groups.

(3) At one time it was assumed that certain areas of the world were free from race prejudice. Hawaii and Brazil were often cited as examples of interracial "alohas" where all race prejudice had disappeared. More careful students of these areas have found that despite a superficial interracial harmony, racial preferences and prejudices are manifested in both these areas. In "Racial Attitudes in Brazil" (*American Journal of Sociology*, Vol. 54, No. 5 (1949), pp. 402-408), Dr. Emilio Willems described color prejudice in the city of Sao Paulo, Brazil, as manifested in a series of interviews carried out among middle and upper-class whites. Dr. Willems found:

". . . Of the 215 advertisers, 194 were interviewed about the reasons for their unfavorable attitude toward Negro servants. In this interview, 18 were unable to give any clear answer, but they found their own attitude 'very natural.' 18 advertisers did not accept Negro servants because of presumed lack of cleanliness; 30 thought black housemaids were always thieves; 14 alleged instability and lack of assiduity; and 12 said only that they were used to white servants and therefore did not wish to engage colored ones. Seven persons precluded Negroes because of the contact they would have with their young children. There were a few other reasons, such as 'race odor,' bad character,' laziness,' carelessness,' and other imperfections that were ascribed to Negro servants.

". . . There are many situations in social life where white people refuse to be seen with Negroes. In such public places as high-class hotels, restaurants, or casinoes, fashionable clubs and dances, Negroes are not desired, and there are few whites who dare to introduce Negro friends or relatives into such places. This discrimination was strongly resented by middle-class Negroes. On the other hand, those Negroes complained bitterly of the contemptuous attitudes that middle-class mulattoes assumed toward them.

". . . Yet our inquiry led to some other interesting results. In 23 out of 36 cases the questionnaires contained references to formal associations of all kinds from which Negroes were excluded. Usually these associations are clubs maintained by the upper-class families of the city. Though there does not exist any reference to Negro members in club statutes, these are rarely admitted . . ."

In "Stereotypes, Norms and Interracial Behavior in Sao Paulo, Brazil" (*American Sociological Review*, Vol. 22, No. 6 (1957)), Professors Roger Bastide and Pierre van den Berghe found on the basis of a questionnaire given to 580 white students from five different teachers' colleges in Sao Paulo, Brazil, that:

"Stereotypes against Negroes and mulattoes are widespread. Seventy-five per cent of the sample accept twenty-three or more stereotypes against Negroes. No one rejects all stereotypes against Negroes . . . Mulattoes are judged inferior or superior to whites on the same traits as Negroes but somewhat lower percentages. The most widely accepted stereotypes are lack of hygiene (accepted by 91 per cent), physical unattractiveness (87 per cent), superstition (80 per cent), lack of financial foresight (77 per cent), lack of morality (76 per cent), aggressiveness (73 per cent), laziness (72 per cent), lack of persistence at work (62 per cent), sexual 'perversity' (57 per cent), and exhibitionism (50 per cent)."

(4) Strong patterns of racial preference emerge in pre-school children—even as early as 2½ years of age. In "Evidence Concerning the Genesis of Interracial Attitudes" (*The American Anthropologist*, Vol. 48, No. 4 1946)), Dr. Mary Ellen Goodman investigated the age at which racial attitudes become manifest. Fifteen

Negro and twelve white children, ranging in age at the beginning of the study from 2-9 to 4-4 and who attended a bi-racial nursery school were studied. Dr. Goodman noted that "awareness of one's racial identity may be regarded as one facet of that consciousness of self which is gradually achieved during the first three or four years of life," and "preliminary analysis leads to the belief that these children of approximately 3 to 4½ years were in the process of becoming aware of race differences."

The early genesis of racial attitudes has been confirmed in other studies in "well-integrated" areas where there is an absence of overt racial hostility and legal racial segregation. Drs. Catherine Landreth and Barbara C. Johnson conducted such a study in the child care centers of Berkeley, Oakland, and San Francisco, California, and reported in "Young Children's Responses to a Picture and Inset Test Designed to Reveal Reactions to Persons of Different Skin Color" (*Child Development*, Vol. 24, No. 1, (1953)). They concluded that "patterns of response to persons of different skin color are present as early as three years and become accentuated during the succeeding two years."

Drs. Marion Radke, Gene Sutherland and Pearl Rosenberg studied the racial attitudes of children in Pittsburgh, Pennsylvania (*Sociometry*, Vol. 13, No. 2, 1953).

They found "the white children in all the situations and at all ages (seven to thirteen years) expressed strong preference for their own racial group. This is particularly the case when their choices between Negro and white children as friends are on an abstract or wish level."

(5) Some sociologists contend that Negroes would suffer far more from racial integration than from racial segregation. Thus Professor Johnson* notes that ". . . if the Negroes would refuse to identify themselves consciously with the Negroes as a social group, then they would develop a kind of collective neurosis, as do other minorities, too; for the conscious 'we' would in case of such an attitude be persistently in conflict with the unconscious 'we,' and this inner split would inevitably reflect itself in different pathological distortions of the Negro personality."

For contrast, Allison Davis (Racial Status and Personality Development, *The Scientific Monthly*, Vol. 57, Oct. 1943) noted ". . . where the social group of the racially subordinate individual is highly organized and integrated, as in the Little Italies or Chinatowns, or in many Southern Negro communities, its members will usually have relatively less personal conflict over their racial status." Similarly, Mozelle Hill ("A Comparative Study of Race Attitudes in the All Negro Community in Oklahoma," *Phylon*, 1946) noted that Negroes raised and educated in an all Negro community tend to have "a much higher regard for Negroes," and are more favorable in their expression toward their own race.

Intervenor's Exhibit No. 2

Stodolsky and Lesser: Learning Patterns in the Disadvantaged, 37 Harvard Educational Review 546 (Fall 1967 (Charts Only)

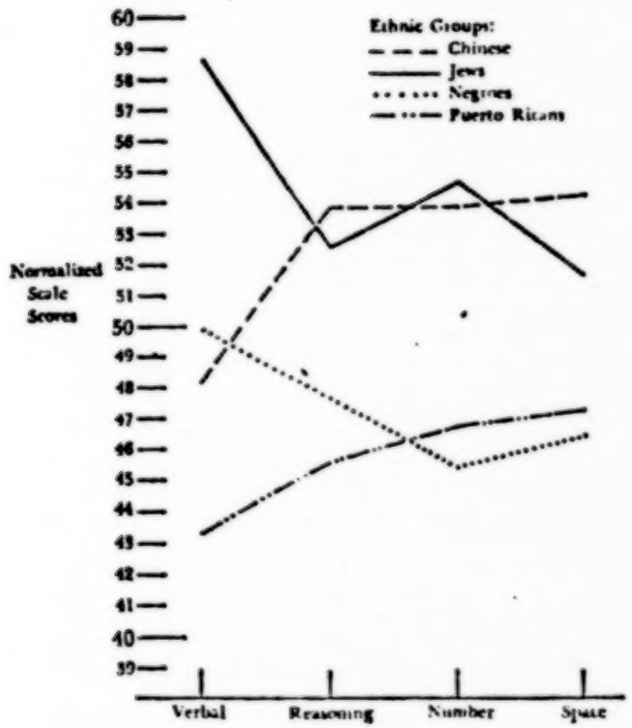

Fig. 1. *Pattern of Normalized Mental-Ability Scores for Each Ethnic Group*

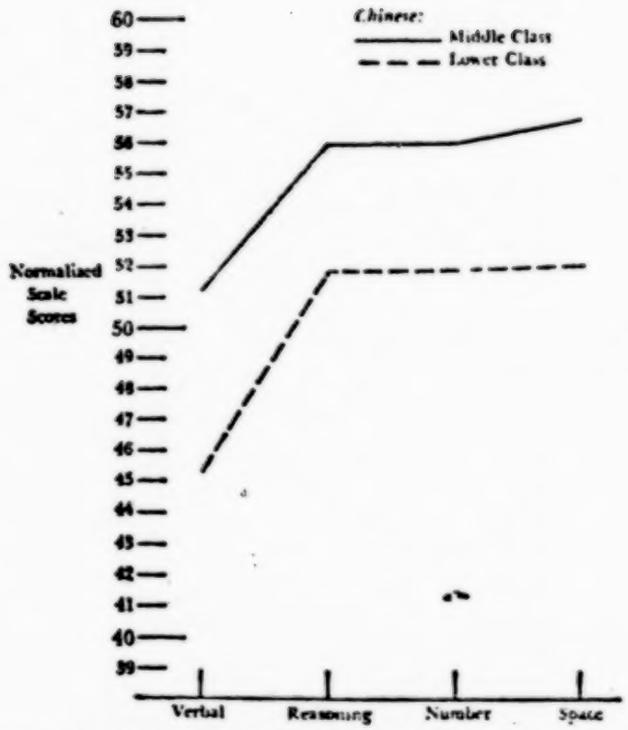

Fig. 2. *Patterns of Normalized Mental-Ability Scores for Middle- and Lower-Class Chinese Children.*

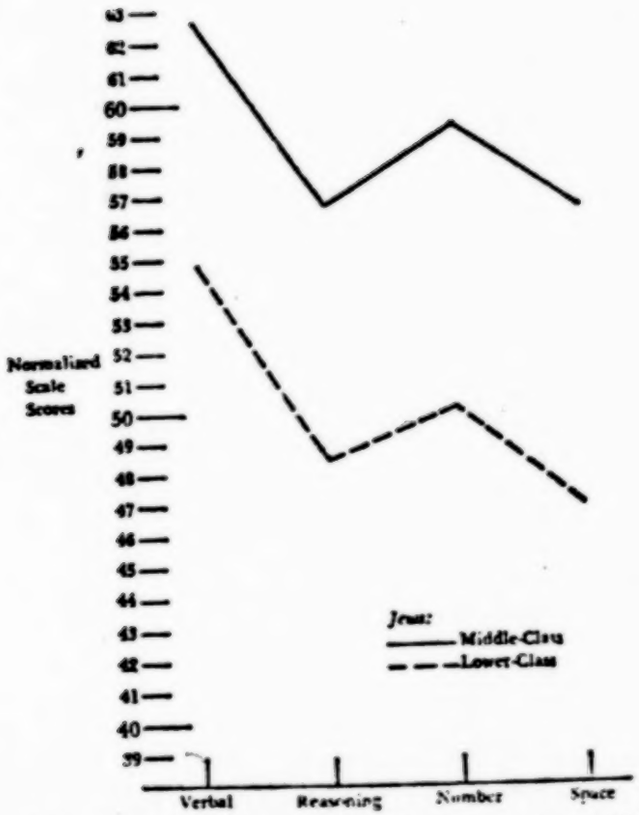

Fig. 3. *Patterns of Normalized Mental-Ability Scores for Middle- and Lower-Class Jewish Children.*

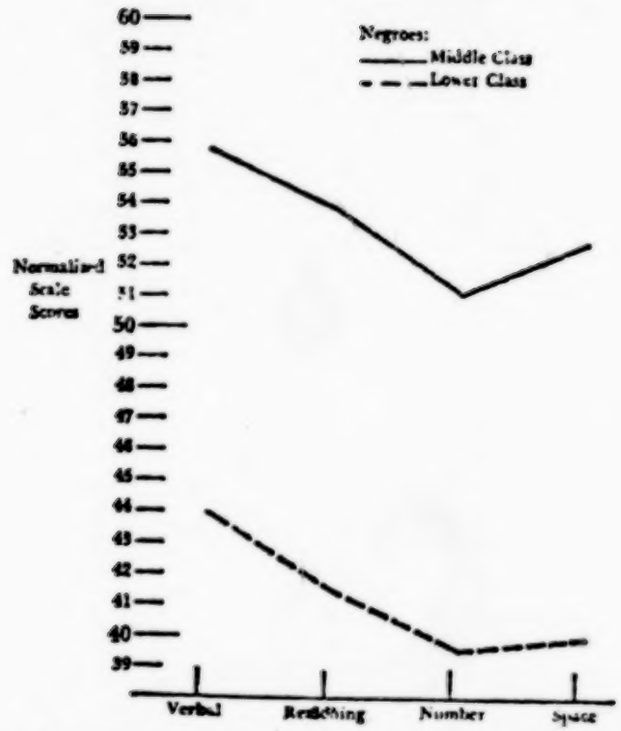

Fig. 4. *Patterns of Normalized Mental-Ability Scores for Middle- and Lower-Class Negro Children*

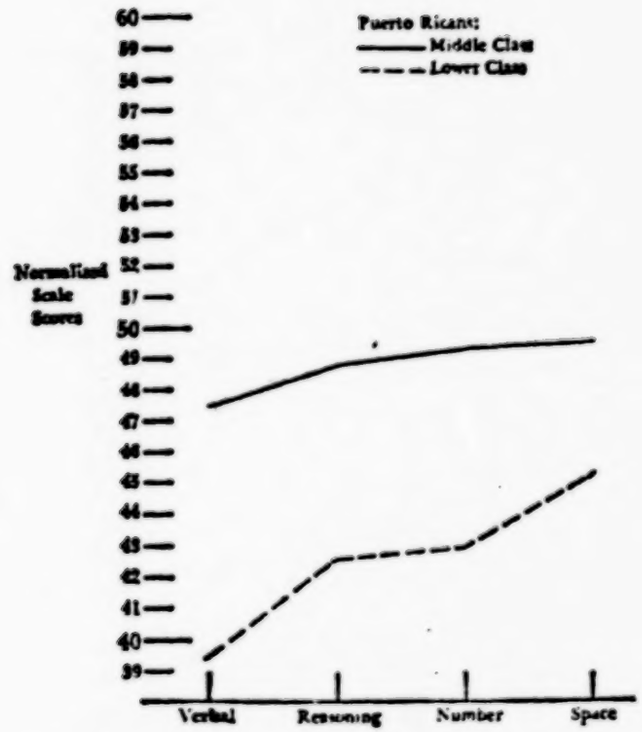

Fig. 5. *Patterns of Normalized Mental-Ability Scores for Middle- and Lower-Class Puerto Rican Children.*

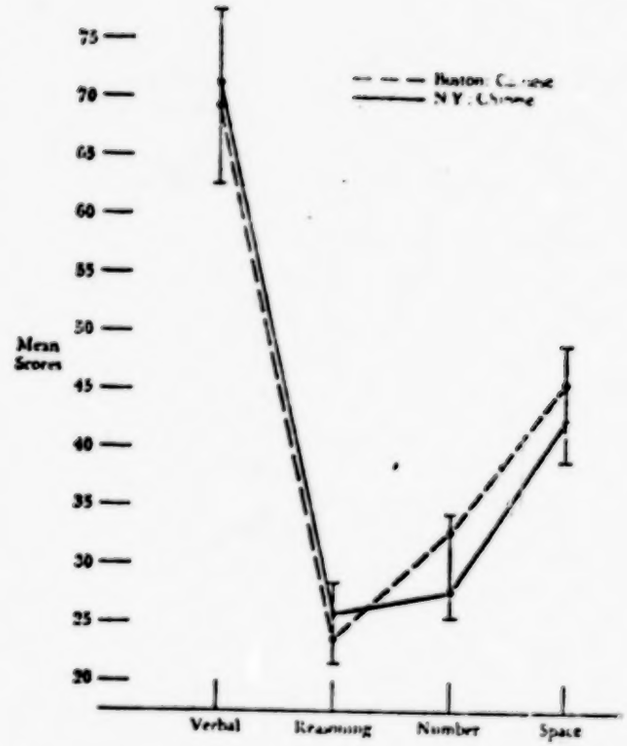

Fig. 6. *Mean Mental Ability Scores for* Chinese *Children in Boston (N = 20) and New York (N = 80).*

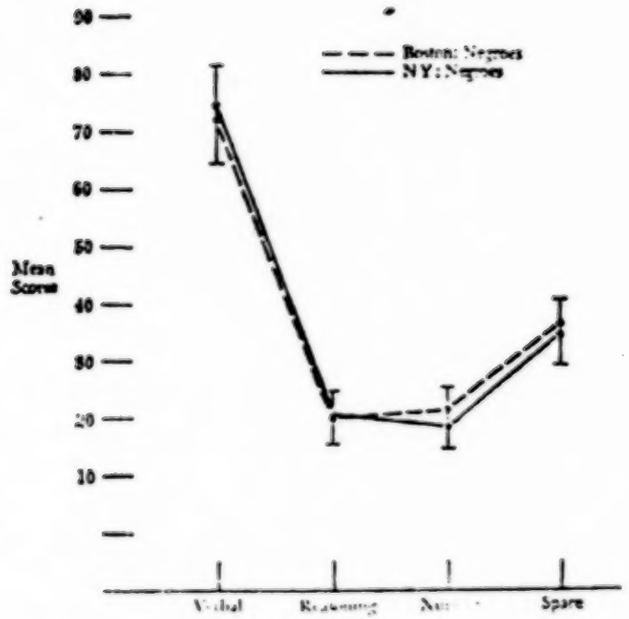

Fig. 7. ***Mean Mental Ability Scores for Negro Children in Boston (N = 20) and New York (N = 89).***

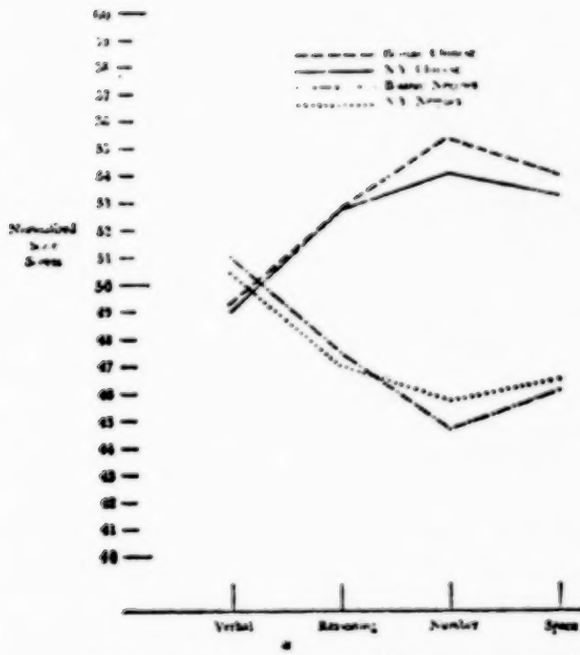

Fig. 8. ***Patterns of Mental Ability for Chinese and Negro Children: NY vs. Boston.***

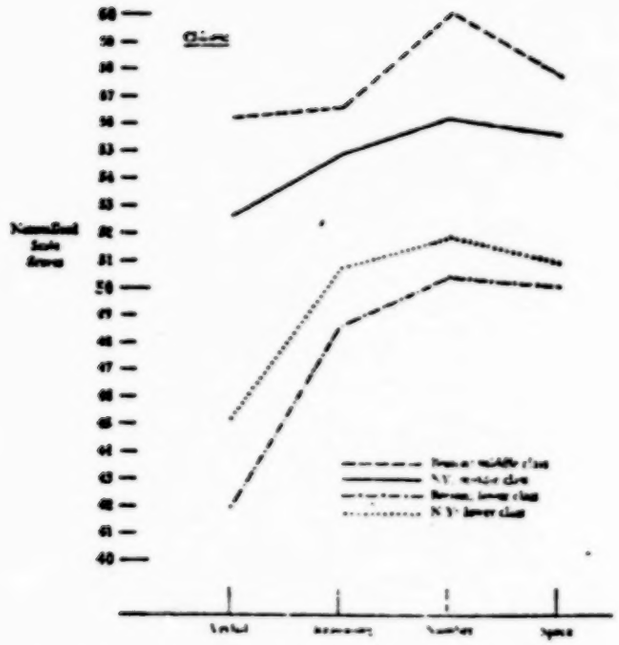

Fig. 9. *Patterns of Mental Ability for Chinese Children; Middle- and Lower-Class, NY vs. Boston.*

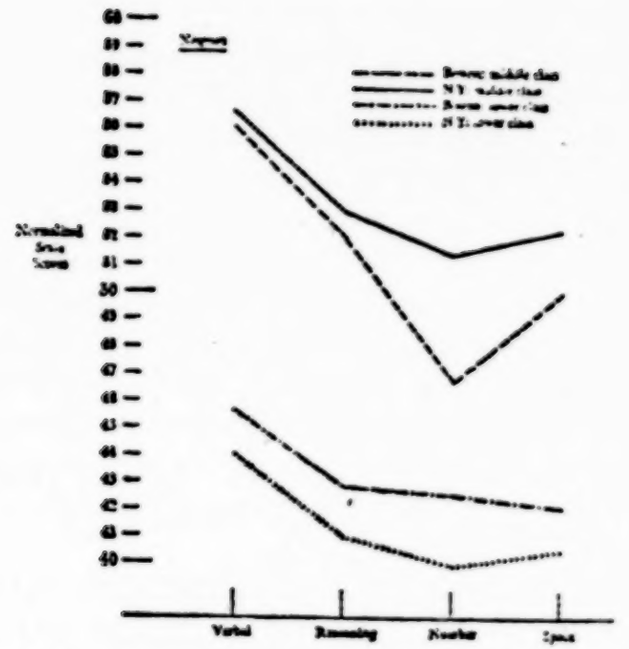

Fig. 10. *Patterns of Mental Ability for Negro Children; Middle- and Lower-Class, NY vs. Boston.*

Are equalization and diversification necessarily incompatible goals? We do not believe so. If accelerating the feasible gains in jobs, education, and housing of lower-class families accelerates the gains in intellectual development of their children and reduces the difference in intellectual performance between social-class groups, we can all agree on the desirability of this outcome. On the other hand, if recognizing the particular patterns of intellectual strengths and weaknesses of various ethnic groups and maximizing the potential power of these patterns by matching instructional conditions to them makes the intellectual accomplishments of different ethnic groups more diverse, we can all accept this gain in pluralism within our society. Thus, if lower-class children now perform intellectually more poorly than middle-class children—and it is clear that they do—and lower-class status can be diluted or removed by a society truly dedicated to doing so, this gain in equalization seems to be one legitimate aim of education. If the maximum educational promotion of particular patterns of ability accentuates the diverse contributions of different ethnic groups, this gain in pluralism seems another legitimate aim of education.

Our main point is that the study of mental abilities suggests that there may be patterns of attributes (cognitive, personality, motivational, and so forth) which are related in some regular way to ethnic-group membership. School-based research has not as yet identified the particular patterns of attributes that are educationally important and which (when matched with the appropriate instructional strategies) will maximize school achievement. Thus, we do not yet know if attribute patterns associated with ethnic-group membership will, in fact, be identified as educationally important. We believe, however, that data such as those derived from the current mental-abilities study must be considered since their implications may in fact require revisions of Coleman's position. We raise the issue because we are committed to our program of school-based research; whether ethnic-group differences are in fact minimized, held constant, or inflated by the programs which match individual differences to instructional strategies, we believe it important to pursue these programs nonetheless.

Perhaps this position asks no more than to change what is bad and changeable in education and society (resulting perhaps in greater equalization) and to use maximally what is good in education and society (resulting perhaps in increased diversity). Logic—and the empirical evidence—endorses both conclusions.

Intervenor's Exhibit 3

In The
UNITED STATES DISTRICT COURT
For The
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

* * * * *

AFFIDAVIT OF WILLIAM J. SIMMONS, PRESIDENT OF THE SOUTHERN INDEPENDENT SCHOOL ASSOCIATION, APPLICANT FOR INTERVENTION

CITY OF JACKSON)
STATE OF MISSISSIPPI) ss:

WILLIAM J. SIMMONS, being duly sworn, deposes and says:

1. I am the President of the Southern Independent School Association (SISA) chartered as a nonprofit Georgia corporation for the purpose of improving the academic standards and educational facilities of the more than 300 private schools associated in its component state private school associations in Virginia, North Carolina, South Carolina, Mississippi, Alabama and Louisiana.

2. Although SISA has no charter restriction against membership of state private school associations which may themselves be composed of open or closed admission member private schools and having student bodies not limited to any particular creed, sex or ethnic group, nevertheless, a majority of the private schools represented by SISA do limit admission to white students and teach under a curriculum designed to meet their particular educational capacities. Moreover, SISA has a policy of supporting the absolute right of each private school to determine for itself in each

case what admission requirements will be adopted, and its present application is in support of that policy.

3. SISA applies to intervene as a party defendant both as to itself, as representative of the approximately 175,000 pupils presently enrolled in such State association schools and their partents; and also as representative of the class of all similarly situated privately supported schools in the United States using admission criteria based on the race, religion, sex or national origin of the student body. I append a sample list of such educational organizations randomly selected from the more than 33,000 recognized as tax exempt by the Internal Revenue Service. On information received from the Department of Health, Education and Welfare there are at least 18,000 private elementary and secondary schools in the United States, of which a majority are indicated as having admission limitations or priorities based on some constitutionally significant classification.

4. On information and belief, the substantial majority of all parents who have enrolled their children in the private schools represented by SISA are citizens of the United States in which they reside, are taxpayers who contribute through federal, state and local taxes for the support of public education without rebate, assistance or subsidy for the additional payments they are required to make for the support of their children in these private schools.

5. On information and belief, the schools represented by this Association are on the average educationally advanced from one to two years over public schools in their area as measured by nationally standardized tests, notwithstanding that the per pupil capital and operating costs of such private schools are believed to be small fractions of comparable costs in the public schools. In the opinion of the Association, its directors and educational consultants,

this accomplishment is directly and causally related to the increased homogeneity of the student bodies which admission restrictions make possible. Moreover, because of their private nature, these schools are also enabled to maintain traditional religious and patriotic observations of a type which have been eliminated from the public school systems of the country but are regarded by private school parents as being of significant value.

6. An adverse determination of the issue of law posited by the pleadings herein would directly prejudice the continued viability of all such schools and deprive the parents concerned of their constitutional right of association to express themselves in the education of their children in a manner consistent with their beliefs.

7. Any adverse disposition of this action would as a practical matter impair and impede the ability of SISA and the schools it represents to protect these interests of the parents and children concerned. Because of the greater diversity and geographical scope of applicant's activities, its interest cannot be adequately represented soleiy by the particular facts applicable to the existing defendant.

Sworn to before me this 11th
day of June, 1973

/s/ William J. Simmons

/s/ Yvonne D. Williams
Notary Public

My Commission Expires June 11, 1975.

RANDOM EXAMPLES FROM INTERNAL REVENUE SERVICE LISTING OF 33,000 PRIVATE, NON-PROFIT EDUCATIONAL INSTITUTIONS SHOWING CONSTITUTIONALLY SIGNIFICANT LIMITATIONS ON ADMISSION OR SERVICE

A. Race:

1. American Indian

All Tribes Indian School, Bernadillo, New Mexico
Christian Indian School, Sedona, Arizona
American Indian Educational Foundation, New York, N.Y.
Faris Educational Fund of the Jicarilla Apache Tribe of New Mexico, Albuquerque, N.M.
American Indian Children's Home, Schell City, Mo.
Wisconsin Indian Scholarship Council, Inc., Madison, Wisconsin
Zuni Christian Reformed Mission School, Zuni, N.M.

2. Chinese

Chinese Public School, Stockton, Calif.
Waianae Chinese School, Waianae Oahu, Hawauu
Wahiawa Wah Mun Chinese School, Wahiawa, Hawaii
Chung Shan School, Honolulu, Hawaii

3. Japanese

Wahiawa Japanese Holiness Church Schools, Wahiawa Oahu, Hawaii
Japanese Scholarship Foundation, Westfield, N.J.
Shonien (Japanese Children's Home), Los Angeles, Calif.

4. Mexican

Wichita Falls Mexican Community Day Nursery, Wichita Falls, Texas
Mexican American Educational Association, Sacramento, Calif.
Mexican Bible Seminary, Nogales, Arizona

5. Negro

African Christian Schools Foundation, Inc., Nashville, Tenn.
American Council on Negro Education, Brooklyn, N.Y.
Associates in Negro Folk Education, Washington, D.C.
Bethune (Mary McLeod) Day Nursery, Corpus Christi, Texas
Booker T. Washington and Franklin Normal Industrial and Academic School, Inc., Rocky Mount, Va.
Columbia Negro Nursery School, Columbia, Mo.

Educational Foundation of the National Council of Negro Women, Inc., Washington, D.C.
The Greater Middletown Negro Youth Scholarship Fund, Middletown, Connecticut
Harlem Preparatory School, New York, N.Y.
Harriet Tubman High School, Simpsonville, Md.
Martin L. King Scholarship Fund of Florida, Gainesville, Fla.
Palmer Memorial Institute, Sedalia, N.C.
Voorhees High School, Denmark. S.C.
Winter Park Day Nursery Assocation for Colored Children, Winter Park, Fla.

B. National Origin:

1. Bohemian

Bohemian School "Jan Nerida", Chicago, Ill.
Bohemian School Jan Amos Komensky at Winfield, Long Island, Winfield, N.Y.

2. Croatian

Croatian Board of Trade Scholarship Fund, Detroit, Mich.

3. Czech

Czech Free School of New York, New York, N.Y.
Czech Educational Foundation, College Station, Texas

4. French

French American School of Chicago, Chicago, Ill.
French American Bilingual School, San Francisco, Calif.
Ecole Maternelle Francais, New York, N.Y.

5. German

German Language School of Children, Seattle, Wash.
German School of the East Bay, Oakland, Calif.
German School of the Mid-Peninsula, Redwood City, Calif.
German-American School Association, New York, N.Y.
German-American School Association of Southern California, Los Angeles, Calif.
German School Association and Free Community, St. Louis, Mo.

6. Greek

Greek Children's Care, New York, N.Y.
Greek Community School of Highlandtown, Baltimore, Md.

7. Irish

Irish Scholarship Foundation, Providence, R.I.

8. Polish

Polish American Scholarship Fund, Chicago, Ill.
Polish Bible Students Association, Chicago, Ill.
Polish Manual Training School for Boys, Niles, Ill.

9. Russian

Russian Student Fund, New York, N.Y.

10. Ukrainian

Ukrainian Student Fund, New York, N.Y.

C. Creed

1. Bible

Capital Bible Training School, Salem, Oregon
Frontier School of the Bible, La Grange Wyoming
Faith Bible Academy, Camdenton, Mo.
Week-Day School of Religious Education, Coronado, Calif.

2. Hebrew

Akiva Hebrew Day School (Yeshivat Akiva), Detroit, Mich.
Adath Israel Nursery School, Woodbridge, N.J.
Bialek School of the Flatbush Jewish Center, Brooklyn, N.Y.
Beth Sholom Kindergarten, Columbia, S.C.
Beth El Hebrew School, Dorechester, Mass.
Columbus Torah School, Columbus, Ohio
First Hebrew Day Nursery, Brooklyn, N.Y.
Fall River Hebrew School, Fall River, Mass.
West Coast Talmudical Seminary, Los Angeles, Calif.

3. Mennonite

Alden Mennonite School, Marilla, N.Y.
Amish-Mennonite School, Montezuma, Ga.
Franconia Mennonite Day School, Souderton, Pa.

D. Sex

1. Boys

Ferris School for Boys, Wilminton, Del.
Chaddock Boys School, Quincy, Ill.
Catalina Island School for Boys, Santa Catalina Island, Calif.

Anson Boys School, Marshalltown, Iowa
Academy for Boys, Albuquerque, N.M.

2. Girls

Westlake School for Girls, Los Angeles, Calif.
Andrews School for Girls, Willoughby, Ohio
Albany Academy for Girls, Albany, N.Y.
Beth Jacob-Beth Miriam School for Girls, Bronx, N.Y.
Barnard School for Girls, Inc., New York, N.Y.

E. Mental and Physical Characteristics

1. Exceptional

Fuller School for Exceptional Children, Fayetteville, N.C.
Carroll County Exceptional Children Organization, Delphi, Ind.
Christ Child School for Exceptional Children, St. Paul, Minn.
Chelmsford Nursery for Exceptional Children, Chelmsford, Mass.

2. Retarded

Lucinda Weeks School for Handicapped Children, San Francisco, Calif.
Arizona School for Retarded Children, Phoenix, Arizona
Brooklyn Hebrew School for Retarded Children, Brooklyn, N.Y.
Boston Speech School for Crippled Children, Inc., Boston, Mass.
Chicago School for Retarded Children, Chicago, Ill.

3. Handicapped

a. Blind

Clovernook School for the Blind, Cincinnati, Ohio
Boston Nursery for Blind Babies, Boston, Mass.
Wisconsin School for the Visually Handicapped, Jamesville, Wisc.

b. Cerebral Palsy

Cerebral Palsy Nursery School, Lexington, Ky.
Cerebral Palsy Preschool Center, Nashville, Tenn.
Cerebral Palsy School, Louisville, Ky.

c. Deaf

Beverly School for the Deaf, Beverly, Mass.
Central New York School for the Deaf, Rome, N.Y.

Gastonia Oral School for Hearing Impaired Children, Gastonia, N.C.
American School at Hartford for the Deaf, Hartford, Conn.

F. Limited to Small Group

Department of Justice Scholarship Fund, Washington, D.C.
Derrickmen's Apprentice Educational Fund, Local 197, New York, N.Y.
Educational Fund for Children of Phillips Petroleum Company Employees, New York, N.Y.
Educational Fund for War Foster Children, Glencoe, Ill.
War Orphans Scholarships, Inc., New York, N.Y.

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

COLIN M. GONZALES, *et al*, *Plaintiffs*, v. FAIRFAX-BREWSTER SCHOOL, INC., *Defendant*.	)	**CIVIL ACTION NO. 494-72-A**
MICHAEL C. McCRARY, *et al*, *Plaintiffs*, v. RUSSELL L. RUNYON, *et al*, dba BOBBE'S SCHOOL, *Defendants*, and SOUTHERN INDEPENDENT SCHOOL ASSOCIATION, *Intervenor-Defendant*.	)	**CIVIL ACTION NO.495-72-A**

TRIAL PROCEEDINGS

Alexandria, Virginia
July 16, 1973

Before HONORABLE ALBERT V. BRYAN, JR.,
United States District Judge.

Appearances:

ALLISON W. BROWN, JR., ESQ.,
and
ROBERT M. ALEXANDER, ESQ.,
Attorneys for the Plaintiffs.

Attorneys for Defendants in
Civil Action No. 494-72-A

McDONALD & NEWTON, ESQS.,
BY: WESLEY E. McDONALD, ESQ., of Counsel,
B. AUSTIN NEWTON, JR., ESQ., of Counsel,
and
ANDREW A. LIPSCOMB, ESQ.

Attorneys for Defendants in
Civil Action No. 495-72-A

VAROUTSOS, KOUTOULAKOS, ARTHUR &
HILTON, ESQS.,
BY: LOUIS KOUTOULAKOS, ESQ., of Counsel.

Attorneys for Defendant-Intervenor in
Civil Action No. 495-72-A

LEONARD, CLAMMER & FLUES, ESQS.,
BY: GEORGE STEPHEN LEONARD, ESQ.,
of Counsel.
EDITH D. HAKOLA, ESQ., of Counsel.

Whereupon,

MARGARET R. GONZALES,

called as a witness by and on her own behalf, having been first duly sworn, was examined and testified as follows:

MR. BROWN: Your Honor, I would like to introduce at this time the various answers to interrogatories–the interrogatories and answers to interrogatories that were–interrogatories of the plaintiffs and the answers thereto of the defendants in this case; have them introduced as evidence.

I would also like to introduce as evidence the exhibits which were amrked, and have been marked in the file of the case, as Plaintiffs' Exhibits 1, 2, 3 and 4.

THE COURT: All right.

MR. BROWN: I would also like to call attention to the fact that there have been certain stipulations entered into that are in the file also.

THE COURT: They are already part of the record.

DIRECT EXAMINATION

BY MR. BROWN:

Q. Will you state your name, please. A. Margaret R. Gonzales.

Q. And where do you live? A. 4507 Hendricks Drive, Dale City.

Q. Are you employed, Mrs. Gonzales? A. Yes, I am.

Q. Where are you employed? A. Howard University, College of Medicine.

Q. And what do you do there? A. I am a medical steno-clerk

* * * * *

8 Q. How long have you lived at your present address? A. A little over a month now.

Q. Where did you live previously? A. 6030 Vista Drive, Falls Church, Virginia.

* * * * *

Q. You have a son named Colin Gonzales? A. Yes, I do.

Q. What is his age? A. He's nine.

Q. What was the date of his birth? A. October 8, 1963.

Q. What is his race? A. He's black.

Q. Did there come a time when you learned of a school known as Fairfax-Brewster School? A. Yes.

9 Q. How did you learn of the school? A. Through the yellow pages. I saw an ad in the yellow pages.

* * * * *

Q. You mean by that, the classified – A. Right.

Q. – phone directory? A. Yes, as well as receiving advertising, you know, advertising in the mail.

Q. Were you sent an advertisiement in the mail? A. Yes.

Q. Was it addressed – A. Addressed to "Resident, 6030 Vista Drive."

Q. Have you every heard of the school through friends or neighbors or – A. Yes, I did.

Q. What were those circumstances? How did that happen? A. A friend I worked with had a son who attended the summer camp with Fairfax-Brewster.

Q. Did there come a time when you sought to enroll Colin in Fairfax-Brewster School? A. Yes, I did.

Q. When was that? A. This was in the spring of 1969.

10 Q. And how old was Colin then? A. He was five, five and a half.

Q. Why did you choose the Fairfax-Brewster School? A. Because it was in an area convenient to where we lived.

Q. About how far was that? A. I'd say about a five-minute walk, five to ten-minute walk from where we lived.

Q. When you contacted the school, you say, in the spring of 1969, what was your purpose in contacting it? A. Of having Colin enrolled–having him attend summer camp and to continue school in the fall.

Q. Did you then contact the Fairfax-Brewster School? A. Yes, I did.

Q. Do you know who you spoke to? A. No.

Q. And what happened? A. Well, I contacted the school and I was informed of what was required for Colin to attend the school, and I was told that–well, you know, he'd need a medical certificate and, of course, an application form would be required to be filled out, and I think I was also informed of the tuition fees for this school.

11 Q. Did you ever visit the school? A. Yes, I did.

Q. How did that come about? A. We visited the school. I think it was after – You know, after having all these things ready, we visited the school with Colin. That's my husband, myself and Colin. We visited the school.

Q. What is your husband's name? A. Raymond Gonzales.

Q. Well, had you made the arrangements to visit the school by telephone? A. Yes. An appointment date was set up that we would come into the school.

Q. Now, do you remember just about when this was? Could you specify it more clearly? A. It must have been sometime in early May.

Q. Early May? A. Uh-huh.

Q. What year? A. 1969.

Q. Would you describe what happened when you visited the school? A. Well, my husband, Colin and myself, we went over to the school sometime in the morning, and at the time the school was in session and
12 we – we were invited to visit the classrooms, and I remember getting to the kindergarten classroom and there was a class in session there and at the time they must have been in the process of learning the time and I remember, you know, asking Colin, you know, if he knew – if he knew what time they wanted, because he had already had an idea of time from the nursery school that he was attending.

We were shown the play area an, you know, the lunch, you know – well, where the kids eat their lunch in the classroom, and things like that, and then we came out to the office and sat there for a while. We spoke to someone in the office who informed us that, you know, they'd get in touch with us, I guess, with the intent of letting us know whether Colin was accepted at the school.

Q. Who did you speak to in the office? A. I don't know the name of the person at the time. It was – a female employee.

Q. Were you escorted around the school? A. Yes, we were.

Q. By that same person? A. No. We – we were escorted around by someone else and – well, they, of course, left us in the office and the employee in the office informed us, you know, that they would get in touch with us.

Q. Did the person who escroted you around – was
13 that person a man or a woman? A. A woman.

Q. When you visited around and were shown around the school, was it your intention – what grade were you aiming for? I mean, what – was Colin going to go into kindergarten or go into first grade? A. Well, first of all, I'd like to explain that my whole idea was to get Colin into the camp so that he could, you know, continue school in the fall. It was so that he would, you know, get accustomed to the environment, and so on. So, the main idea was to get him into summer school and to continue school in the fall.

Q. Into summer what? A. Into summer camp, you know, and continue school in the fall; and at the time it was – you know, it was my impression that Colin would go into the first grade because he was eligible for the first grade, having already gone through kindergarten at the school he was attending.

Q. What was the school he had attended? A. Crossroads Day Nursery and Kindergarten.

Q. Where was that located? A. At Bailey's Crossroads.

Q. When you were shown around the school, what was Colin's reaction? A. He was quite impressed because
14 there was a little boy attending there at the time who he had already knew from Crossroads Day Nursery.

Q. Was he –

What other things –

You say he was impressed.

What – A. He was excited, you know, about the facilities that they had offered for recreation, like, you know, like whatever he saw on the outside for the kids.

Q. When you visited the school, was any indication given to you that Colin was qualified or that he was not

qualified? A. No, none whatsoever.

Q. So you weren't given any idea as to whether he would be accepted – A. No.

Q. – for enrollment, – A. No.

Q. – really, one way or the other? A. No.

Q. When Colin had gone to this previous school, had there been any adverse reports or had he done all right at the kindergarten? A. Ok, yes, he had.

Q. Did you – when did you – or did you fill out
15 application forms? A. Yes, we did.

Q. When was that? A. I don't remember clearly – exactly when the application form was filled out, but I know that we submitted an application form with a check to Fairfax-Brewster School.

* * * * *

Q. What was the check for? Was that for the first tuition payment? A. It was –

No, no, no. It was a registration check that was required at the time, you know, in an application form submitted.

* * * * *

16 Q. What were the things that you submitted to the Fairfax-Brewster School? A. An application form, a check for registration and medical records.

THE COURT: I didn't understand whether you took that with you on the visit or whether you submitted it previous to the visit or whether you submitted it after the visit.

THE WITNESS: It's not quite clear if I had submitted it previously or if I had submitted it on the day that we had visited the school. I'm not quite sure.

16 BY MR. BROWN:

Q. Well, did you submit it after you went to the school or did you – A. No, no, no, no time after. It – it – it was before we went to the schook but I'm not quite sure if it was submitted the day we actually visited the school or if it was submitted before the visit.

Q. Had you taken Colin to a doctor for a physical examination for the purpose of entering him in this school? A. Yes, we did.

17 Q. I mean, you say you had a medical form. A. Yes. We had to have – take him to a doctor, you know, to be able to get the medical certificate to present to the school.

Q. Was this the first school you had applied to? A. Yes, it was the first school.

Q. That spring? A. Yes.

Q. When did you learn, and under what circumstances, what had happened to your application for enrollment? A. When we received some correspondence in the mail from Fairfax-Brewster, stating that they weren't able to accept our application at this time, and the check was returned along with the medical records.

Q. Was any reason stated in the correspondence? A. No. It just said that, you know, they were unable to accept our application at this time.

Q. What happened then? A. My husband got in touch with Fairfax-Brewster and he spoke to someone there, you know, in reference as to why our check was returned and what was the reason for returning our check.

Q. What did your husband tell you about the problem? Did you learn then that Colin was going to be able to
18 attend the school or that he was not going to be able to attend school? A. No. I learned then that he was not going to be able to attend school.

Q. What did you or your husband do then, or did you discuss this with your husband? I mean, did you discuss his rejection with your husband? A. Yes, I did.

Q. What did you decide to do then? A. Well, at the time we were – we were quite upset and distressed about, you know, being refused, our application being turned down at this school, and I knew my husband was very angry and he called – and he called the HEW to find out, you know, exactly, you know, what could we do in a situation like this, because it's the first time we had every been, you know, confronted with this type of a situation, and I – I was very upset. I couldn't – you know, I couldn't possibly believe that, I mean, you know, at this –

Q. Did you contact another school? A. Yeah, we – we contacted another school.

Q. What other schools did you contact? A. The next school we contacted was Bobbe's School.

19 Q. Where is it located? A. It's located in Falls Church, Fairfax County, also near the Bailey's Crossroads.

Q. I'm sorry, I didn't understand you. Fairfax County what? A. It's on – well, it's near Bailey's Crossroads. I don't remember the address.

Q. Is it located near where you lived? A. Well, it was convenient to where we lived also.

* * * * *

Did Colin attend Bobbe's School that year? A. He was not accepted at Bobbe's.

Q. What did you do then? A. We called one more – we called one more school, and that was Congressional Preparatory School, and he was accepted immediately at Congressional.

Q. Where is Congressional School? A. It's on Sleepy Hollow Road in Falls Church, Virginia.

Q. Is it farther from where you lived? A. Oh, yes, it was farther. He – Yes, it was farther.

* * * * *

20 Q. What did Colin do that summer? A. Well, we enrolled him in the camp and he continued school there in the fall.

Q. At Congressional? A. At Congressional.

Q. How long did he attend Congressional School?

A. For two years.

Q. Did he go to the Congressional camp the following summer, that is, the summer – A. No.

Q. – of 1970? A. No. We went to Trinidad on a vacation.

Q. In the two years that Colin was at –

THE COURT: Let me find –

What grade did he go into at Congressional?

THE WITNESS: First grade.

THE COURT: First grade.

BY MR. BROWN:

Q. In that first grade, Mrs. Gonzales, how was Colin's performance? A. He did very well in first grade. He had no problems.

Q. Did you have consultations from time to time –

A. Oh, yes.

21 Q. – with teachers? A. Yes.

Q. You went to parent-teacher meetings? A. Right. I did.

Q. And did you discuss how he was performing with the teachers? A. Oh, yes, yes.

Q. Did you get any adverse reports about his behavior?

A. No, none whatsoever.

Q. Did he learn that year the things that children normally learn in the first grade? A. Oh, yes, he did.

Q. Such as reading – A. Reading, writing.

Q. Writing.

After the two years that he attended Congressional, where did he go? A. He attended St. Anthony's in Falls Church – St. Anthony's Elementary School in Falls Church.

Q. What kind of a school is that? A. A parochial school.

Q. Where is that located? A. On Glen Carlyn Drive in Falls Church, Virginia.

Q. And he went there three years – two years.

22 Excuse me. A. Two years.

Q. And how did he perform at that school? A. He did very well.

Q. So he's now completed four years of school? A. Yes.

Q. He's finished the fourth grade; is that correct?

A. Yes, he has.

Q. And then you moved – A. Right.

Q. – a month or so ago?

* * * * *

Q. Where will he go to school this coming year? A. He's now attending Minneville in Prince William County.

* * * * *

Q. Where is that located? A. In Dale City.

23 Q. That's where you reside now? A. Yes.

Q. Is Congressional School farther from where you used to reside than Fairfax-Brewster School? A. Yes, it is.

Q. How did Colin go to Congressional School? A. By bus.

Q. And how did he return? A. By bus.

Q. Did Colin have any friends who attended Fairfax-Brewster School in 1969 or 1970? A. There was a little boy who lived next door who attended the summer camp at Fairfax-Brewster who's a friend of his.

Q. Do you know the name of that summer camp?

A. Safari, I think it's referred to as.

Q. Safari what? A. Safari Day Camp.

Q. Was Colin interested in attending that camp? A. Oh, yes. He was quite excited because his friend next door was going and he was quite acquainted with, you know, the colorful busses and everything, and he looked forward, you know, going to the camp; and, in fact, we had spoken a whole lot about it, you know, that he would attend the camp in the summer and, you know, go to school in the fall.

24 Q. How was he acquainted with the colorful busses, as you put it? A. Well, next door, the bus – the little boy who lived next door, he traveled the bus to the day camp, so –

Q. Were they just yellow school busses? A. No, no, no. They had like, you know, tiger stripes, or something like that, on the school busses.

Q. Was that to convey a theme of some sort? A. I guess so. A safari effect, I imagine.

Q. Did you inform Colin –

Well, you have testified that you took Colin to the Fairfax-Brewster School, and then a short time later you were told that he was rejected, and you testified that he was excited and interested in going to the school or impressed. A. Yes.

* * * * *

25 Q. Did you inform Colin of the reason that he was unable to attend Fairfax-Brewster School? A. Yes, I did.

Q. What did you tell him?

How did you explain it to him, in other words? A. Well, I tried to explain to him that he was not accepted at the school because he was black.

* * * * *

Q. Could you describe the kind of conversation you had with him – A. Well, of course, this conversation –

26 Q. – or what you told him? A. I spoke to Colin. This was after me and his father had already contacted the school and was informed by them that Colin was not accepted, and it was following this that I tried to explain to Colin, you know, that he could not attend Fairfax-Brewster because, you know, his application – our application was rejected by the school on the basis that he was black.

Q. You think he understood what you were talking about? A. Well, this was – you know, this was quite new to him because, you know, it was the first experience we were having in this – in this situation. So, you know, it took soom explaining to him exactly why, you know, he could not go to the school.

Q. Was he disappointed? A. He was, definitely.

Q. Well now, you say this was the first experience you had of this sort. A. Yes.

Q. To get a little further information on that, you had indicated that you had lived in that area of Bailey's Crossroads neighborhood about five years or so – five or six years. A. Yes.

27 Q. Where did you live prior to that? A. Where did

I live prior –

Q. Prior to living in –

Well, prior to living in this area of Virginia, where did you live? A. Well, we – we came from Trinidad in the West Indies, and we lived in New York for a couple of months and then moved out here to the Falls Church area.

Q. Where was Colin born? A. Colin was born in Trinidad.

Q. Are you and your husband both natives of Trinidad? A. Yes, we are.

Q. Are you both citizens of Trinidad? A. Yes, we are.

Q. Had you personally encountered or had any particular exposure to racial discrimination in Trinidad?

A. No.

Q. In the time that you had lived in the United States, had you had any personal encounters with racial discrimination? A. No, none whatsoever.

Q. Well, how did you feel and how did you explain to Colin what had happened here?

28 How did you feel about this? A. Well, I was very very upset about it. I was angry. It was my first experience with this sort of thing and it was – you know, it was hard to relate to my child that – I mean, you know, that this type of thing existed. You know, it was just quite something I couldn't make myself believe at this time.

Q. Now, this happened in 1969.

Have you had experiences with racial discrimination since then? A. No, not at all.

* * * * *

29 Honor wishes, –

THE COURT: I see no –

MR. BROWN: – I can examine her on that now.

THE COURT: As long as she's on the stand, she might as well testify to whatever she would testify to in both cases.

MR. McDONALD: Your Honor, there is a witness in the room that I did not ask a rule for, but I think, before we go further, we ought to ask for a rule on the witnesses.

THE COURT: It is a little late for that, Mr. McDonald.

MR. McDONALD: Sir?

THE COURT: It is a little late to ask for that.

MR. McDONALD: Well, it may be effective from here on. We just had our first witness up here.

30 THE COURT: All right.

Will all of the witnesses in the case please stand.

MR. LEONARD: Your Honor, on behalf of the intervenor's witnesses who come from out of town, on matters not concerned with the two other schools, I respectfully except to that. I don't believe they should be excluded from the courtroom at the present time.

MR. McDONALD: All right.

THE COURT: Well, it is going to be hard to separate –

MR. McDONALD: We withdraw it in the light of Mr. Leonard's comments.

THE COURT: All right.

MR. ALEXANDER: We wish not to invoke the rule.

THE COURT: All right.

Suppose, Mr. Brown, you go ahead and examine the witnesses on the other case, too.

I don't see how we are going to keep them separate, Mr. McDonald.

MR. McDONALD: It is perfectly all right, Your Honor. I think what we are doing is the only way we can do it.

31 BY MR. BROWN:

Q. I just have one further question, Mrs. Gonzales, about the Fairfax-Brewster School.

What were the hours of the school? A. Well, from what I understood from the school, they offered, you know, baby-sitting facilities whereby a working mother could leave her child there, you know, sometime before the normal school hours and pick him up sometime after the normal school hours, and this was one of the reasons that I was interested in Fairfax-Brewster as well, because this would be very convenient for me.

Q. Because you worked? A. Yes.

MR. BROWN: Your Honor, if I might interrupt a moment.

Because we are now, in effect, moving into the other case, namely, McCrary versus Bobbe's Private School, I would like to formally introduce at this time the interrogatories–plaintiffs' interrogatories–the answers thereto, and the exhibits that were attached thereto, as well as the stipulations that have been entered into in that case.

THE COURT: All right, sir.

Any objection, Mr. Koutoulakos?

32 MR. KOUTOULAKOS: I have no objection.

THE COURT: All right. They will be received in evidence, and they have been received in evidence in the Fairfax-Brewster School case.

MR. BROWN: In the Bobbe School?

THE COURT: Yes, but I don't know that I actually admitted the others into evidence, but they are admitted into evidence in both cases.

* * * * *

Q. Now, Mrs. Gonzales, you have testified that after Colin was rejected by the Fairfax-Brewster School, you thought about alternative schools that he could attend.
A. Right.

Q. Was one of the schools that you considered a school known as Bobbe's Private School? A. Yes.

Q. How had you learned about Bobbe's Private School? Do you know?

* * * * *

33 THE WITNESS: There was an ad in the yellow pages and seeing that it was, you know, convenient to where we were living –

BY MR. BROWN:

Q. Excuse me just a second.

You say there was an ad in the yellow pages? A. In the yellow pages.

Q. You mean the classified telephone directory? A. The classified telephone yellow pages.

Q. Yes. A. And since this school was also very convenient to where we lived, that I thought, you know, this was the next school that I'd contact.

Q. Had you every known anyone who had gone there or – A. Another friend I worked with, her son attended school at Bobbe's.

Q. Is that so?

Where did you work at that time? A. At Security National Bank in the Culmore Shopping Center.

Q. In other words, you testified earlier that at the present time you work at Howard University.

34 How long have you worked at Howard? A. Just about a year.

Q. And prior to that, you worked at Security National Bank in – A. Well, I worked at Security National

Bank from 1968 to '69.

Q. What kind of work did you do there? A. I was a bookkeeper.

Q. And you say that you had a co-worker whose – person you worked with – A. Right.

Q. – whose child went to Bobbe's? A. Yes, yes.

Q. Had she informed you about the school? A. Well, I told her that, you know, I had intended, you know, getting Colin into school, and she suggested, "Well, why not call Bobbe's? My little boy attends school there."

Q. Did Colin have any friends who attended Bobbe's? A. No, he didn't. No, he didn't know this little boy. He had no friends.

Q. Where is Bobbe's located in relation to your home? About how far away? A. I'd say about a five-minute drive.

* * * * *

35 Q. Could you give it in distance, roughly? A. Well, about a mile.

Q. Did there come a time –

Well, after Colin had been rejected by the Fairfax-Brewster School, would you describe what contact you then had with Bobbe's? A. Well, I didn't contact Bobbe's myself. My husband contacted – was the one who contacted the school.

Q. And how did he do that? A. By phone.

* * * * *

Q. Was he accepted or rejected at Bobbe's? A. He was rejected.

36 Q. Did you inform Colin that he had been rejected by Bobbe's School? A. Well, no. There was no

reason to.

Q. There was no reason to? A. No.

* * * * *

Her damages have been foreclosed by the Court's ruling, and I object to any testimony along those lines.

THE COURT: Unless it is one of the defendants, what is the purpose of this?

MR. BROWN: Well, what I am trying to show, Your Honor, is that the rejection, in these circumstances, has an effect on the son because it affects the whole family relationship, and that if she was upset and if her husband was upset and they discussed it with other people, that it created an emotional situation and couldn't help but affect a six-year-old child.

THE COURT: I think –

MR. KOUTOULAKOS: Your Honor, of course –

MR. BROWN: And whehter or not–in other words,

38 whether or not she discussed it directly with her child, it affects the marriage community and, therefore, the son.

THE COURT: Well, I think you can ask her whether this affected the marriage and the homelife, but what she discussed with other people, unless it can be shown that this affected Colin, I don't think is admissible.

MR. BROWN: Well –

THE COURT: And if the family situation was an upset situation, you can ask her that, but what she discussed with other people –

MR. BROWN: Well, if she was upset, it would be indicative of the degree of her upset, if she discussed it with other persons. It would be indicative of the kind of –

THE COURT: I think we can get to it quicker than you're going about it, Mr. Brown.

MR. KOUTOULAKOS: Your Honor, I have the same objection. I think her upset–and, of course, he's now told her what the line of questioning is he wants developed; but I object on the basis that it is immaterial whether she was upset or not.

THE COURT: Well, it is material if her being upset affected Colin, and I think you can ask her if her being upset affected Colin.

39 MR. KOUTOULAKOS: But there is no evidence. She said she never discussed it with Colin, and it is a little far-fetched at this stage. This happened in '69 and we are now in '73, and the family is still together. It is a little far-fetched to get into that area of philosophical damages.

THE COURT: Objection overruled.

BY MR. BROWN:

Q. Were you upset about Colin's rejection from Bobbe's School? A. Yes, I was.

Q. And did you and your husband discuss it? A. Yes, we did.

Q. Can you describe what happened or what effect it had in your family?

* * * * *

41 Q. Would you indicate, Mrs. Gonzales, how you think this experience of being rejected by these two schools affected Colin?

* * * * *

THE WITNESS: Colin was already –

We had already told Colin that – you know, the reasons why he was rejected from the Fairfax-Brewster School, and I don't clearly remember if he was aware that we were trying to get him into Bobbe's at the time,

but, you know, I think you know, he was quite conscious then that – I mean, I believe Colin, you know, realized that there was a difference as regards how others felt about him.

* * * * *

42 Q. How long after the rejection by Fairfax-Brewster and Bobbe's School did you make the inquiry–or your husband or whoever–I don't know–make the inquiry to Congressional School? A. Shortly after.

Q. And during that period there was – what did you do?

I mean, between the time that you were rejected and the time that he was accepted at Congressional, there was a period of what? A. It was a little over a month, because, you know, the whole idea was to know exactly where we would be getting him into school for the summer camp and, you know, continue school in the fall. So,

43 the whole idea was to have him, you know, settled somewhere in the summer and so that he would be, you know, quite used to his environment by the fall.

Q. Does Bobbe's Private School have a summer day camp? A. No, but they offered, you know, a type of baby-sitting facility.

Q. At that time? A. Yes.

Q. And when you say "baby-sitting," he wasn't exactly a baby. A. No, no, but I mean, you know, to be able to attend somewhere in an organized program.

Q. And you intended for him to go to that that summer? A. Yes, yes.

MR. BROWN: That's all.

CROSS–EXAMINATION

BY MR. McDONALD:

Q. Mrs. Gonzales, you told us on direct examination that you first went to this school, I think you said, in May or early June–correct me if my question is improper or wrong– and you went with your husband and your little boy to see about Fairfax-Brewster. Is that correct?

44 A. Right.

Q. Now, is it not a fact that back as early as May and June of 1968 certain material had been sent to you as a result of a telephone call concerning the school's admission requirements and other facts pertinent to admission there? A. Yes.

MR. BROWN: Objection.

I think you misspoke, Mr. McDonald.

I think he said 1968. You meant 1969.

MR. McDONALD: I am only taking it from your deposition.

She just answered, yes, she did have some material sent to her in '68.

MR. BROWN: Bet your pardon.

BY MR. McDONALD:

Q. Now, when you went to the school in '69, did you fix that date on your own, or was it in May –

A. Beg your pardon?

Q. Do you fix the date when you went back with your son and your husband to Fairfax-Brewster–was that in May or June of '69? A. It was May.

Q. Your complaint says that you and your child were

45 rejected in June.

Would that be the date or about the time you got the notice – A. Right.

– or letter advising you that he could not be accepted?

A. Right.

Q. All right.

Now, you have submitted to the Court certain material that you had from the school.

I ask you, is this tye type of application blank?

Do you recall getting that application blank from Fairfax-Brewster, which was made a part of the interrogatories in this case? A. It was something, you know, almost like this, yes.

Q. What does that say up there at the top? A. Fairfax-Brewster School, Enrollment Application and Contract, 1973 to '74.

Q. All right.

Now, was this application that was given up there to that school on that day - was that filled out completely?

A. Yes, it was.

46 Q. All right.

Now, I ask you, had you received this type of a brochure back in May of – A. Yes.

Q. – '68, when you called? A. I don't remember if I received one in '68, but I received one in '69.

Q. Well, did you call the school again before you went over in May of '69?

Did you call them again for more material? A. No, no, no, no.

Q. But they just sent it to you without any call?

A. Well, I had to contact them, you know, to be able to get some information about the school. So when I got, you know, what I received from them, it included one of these.

Q. Did you –

THE COURT: Is that marked as an exhibit so that the record will show what it is?

MR. McDONALD: Your Honor, that is not in there, but she said that – she testified in her deposition that she received a brochure from the school, and I asked her if she recalled receiving this, and she said she did but she didn't know whether she got it in '68 or '69.

47 THE COURT: I just wanted to make sure that the record shows what this is, and it won't unless you identify it.

MR. McDONALD: Well, we will identify it later.

THE COURT: Let's identify it now so we'll know what you're talking about when you say "this."

BY MR. McDONALD:

Q. Now, you say you don't know when you got it, but you do remember getting this piece of material from the school? A. Right

Q. Now, will you just tell us what it is.

Is it a pamphlet? And tell us what it says on the front of it by way of identification. A. "The Fairfax-Brewster School."

Q. All right. And it shows what there?

THE COURT: It speaks for itself.

* * * * *

48 MR. McDONALD: All right.

(The brochure was marked as Defendants' Exhibit No. 1 for identification.)

BY MR. McDONALD:

Q. Now, did you have occasion to read this brochure when you received it? A. Yes, I did.

Q. And with particular reference to the testing there and the evaluation, did it occur to you or did you not know from these that you had to have kindergarten training to get into the first grade? A. Yes, I was under that impression.

Q. And did you answer on your application, when it asked you there about school attended – previous school attended –

I showed you this, and I will show it to you again so that you will know what we are talking about. This

is from the exhibit –

THE COURT: What exhibit?

MR. McDONALD: That's taken from the interrogatories that's been admitted into evidence. It's a school application, enrollment application, which she's talked about, Your Honor.

All right?

49 THE WITNESS: Yes

MR. McDONALD: Wait a minute. I am waiting for the Judge. I didn't know whether the Judge –

Is it all right?

THE COURT: Go ahead.

MR. McDONALD: All right, sir.

BY MR. McDONALD:

Q. Can you see there where it says – A. "Previous School - - -" –

Q. "– Previous School Attended"?

Do you recall filling that out and giving the name of the school? A. I believe I did.

Q. Did you submit any reports supporting the application from this so-called Crossroads Nursery School when you sent the application? A. No.

Q. Any reports of the child's? A. No, I did not.

Q. Nothing, was there? A. No.

Q. Did you not note from here that they wanted reports from previous schools, the records from the previous schools? A. I don't remember clearly.

50 Q. All right.

Now, what type of a school was this Crossroads? A. It was a day-care center nursery and kindergarten as well.

Q. Now, you say "kindergarten."

Tell us, first, what type of a school was it? Was it

a school as we know schools? Was it in a private home, or what type of an operation was it? A. Well, the building, from the outside, seemed like a private home, but on the inside it was, you know, sort of remodeled as a day-care and kindergarten center.

Q. Did you ever go into the school? A. Yes. I was shown around the school when I first registered Colin there.

Q. And what evidence of teaching these kindergarten children did you see yourself in there? A. Beg your pardon?

Q. What evidence of teaching these children any techniques or educational work in the nature of kindergarten students did you see? A. Well, on the walls, you know, displayed, as you would see in the average kindergarten school, were charts of the things that children learn, you know, charts of the alphabet, drawings, you know, numerals, and things like that. In fact, while

51 Colin attended there, you know, every day he would come home with something that he learned from school.

Q. Had you ever been in a kindergarten school before Crossroads? A. Yes

Q. Where? A. In Trinidad.

Q. Was there any reason why you did not get from the Crossroads something pertaining to his grades or how his proficiency was at Crossroads to make it a part of this enrollment application? A. I never requested one, so there was no need to receive one.

Q. Now, you went over there that day with your husband and your little boy and you left your application and you left a check for $20, which was the enrolling fee; is that correct? A. Yeah. I don't remember exactly the amount of the check, but I left the check.

Q. But you left the check? A. Yeah.

Q. All right.

You told counsel you left a medical certificate.

Isn't it a fact that you didn't furnish a medical certi-
52 ficate for several days after that time? A. Beg your pardon?

Q. I say, you told Mr. Brown on direct examination that you left with them a medical certificate, along with his application – A. Yes.

Q. – and the check? A. Yes.

Q. I ask you now, Mrs. Gonzales, is it not a fact that you did not leave a medical certificate that day? A. I don't remember clearly if the medical certificate was submitted, you know, prior to the visit or at the time of the visit.

Q. My question is: Was one there? Did you take it or had one been submitted that day or prior to that day? A. Well, this – I don't remember clearly if I submitted it on the day I actually visited or if it was submitted prior to my visit. I'm not quite clear on that.

Q. Now, when you went over there and talked – you say you talked to a lady. I think you told Mr. Brown you talked to a female. A. Uh-huh.

Q. And what did she talk to you about? Was she there – did you think she was representing the school?
53 Was she there as a receptionist, or something? A. Yeah, I imagine she was, you know, concerning the school because –

Q. All right.

Now, when you talked to her, what did she tell you?

MR. McDONALD: Strike that please, Mr. Reporter.

BY MR. McDONALD:

Q. Did that lady tell you anything about your application? A. Well, she had accepted the application,

you know, as what was required to be presented to the school.

Q. Well, you say "accepted." You mean she took it from you? You handed it to her. She took it? A. Yes. Well, we handed the application over to her.

Q. I understand that.

Now, did she discuss any of the requirements of kindergarten education, or anything like that? A. No, she did not.

Q. Did she tell you, when you talked to her there, that the school had a policy of not taking Negroes? A. No, she did not.

Q. That was not even mentioned, was it? A. No,
54 no.

Q. And she showed you through the classrooms and around the yard? A. Yes.

Q. And you told us you were impressed with the school? A. Yes.

Q. All right.

Getting back to Crossroads, how long had your boy been going over to that so-called nursery school, day school? A. This would have been –

Let's see. It might have been April of '68, June of '69.

Q. All right. He had been in in June –

You mean he only started Crossroads in June? A. He stopped – you know, he left Crossroads in June of '69.

Q. Oh, I'm sorry. You misunderstood my question.

How long had he been going to Crossroads? A. About a year.

Q. Do you know whether or not the Crossroads gave out any reports showing to the parents – showing the
55 progress or attainments of the children that were there?

A. Yes, they did, on request.

Q. Did you ever get a report from them? A. Well, I didn't actually request one from them.

Q. Now, how long was it, after you were there with the application and viewed the premises, before you received this communication saying that the child was not acceptable? How long? A. It must have been a little over two weeks.

Q. Had you had any communication with them – A. No.

Q. – between the time you left the application – A. No.

Q. – and when you got the note? A. No.

Q. Do you know what the note said or the letter or the form, or whatever it was? A. On the form it indicated, you know, the enclosed check and the medical records was being returned and that the application was not acceptable at this time.

Q. All right.

Now, you told counsel that this refusal to accept had a great impact on this child from a nervous and emotional standpoint, didn't you? A. Uh-huh.

56 Q. And you went into detail to tell us just how it affected him.

Is it not a fact that the emotional and the upset condition you told us here today came from the impact that you and your husband put on that boy about the fact that he had been rejected? A. No, I'm afraid not. No.

Q. You believe that a boy, not even six years of age, could go into a trauma state, almost, or in a state of complete frustration and be terribly upset by the mere fact that he couldn't get in a certain little kindergarten somewhere? A. Yes, I'm sure my son was

at the time because he had already built up his – you know, his mind the idea that, to me, this is the school he would be going to attend.

He had been to the school. He had seen, you know, the kids there. He, I'm sure, was impressed with what he saw, and so it was quite frustrating for him to find out that he could not attend.

Q. How long did this condition that you have described so dramatically to His Honor this morning of this child continue after you got this letter of nonaccommodation? A. Well, at the moment – you know, at present – at the time that we, you know,

57 tried to let Colin understand why he couldn't attend the school, there were occasions after that that I realized that there was some aftermath of that experience that affected him, because there were times, you know, when we'd be going by somewhere and he'd ask questions, you know, like, "Well, can we go in there? Are we allowed to go in there?" I mean, this was kind of –

Q. You're speaking now of the whole broad scope of integration, aren't you?

You're not talking about schools.

I am talking about schools. I asked you: How long, after he had not been admitted, did he continue in this depressed, upset, extreme nervous condition that you told us about?

How long did that last? A. Well, it existed at the time when we tried to – you know, when we explained to him just why he was not accepted by the school, and naturally it wore off, you know, over a period of time, but, you know, there were instances when I'm sure that whenever – there were times – things that he said, you know, that I realized he was still conscious –

Q. Well, you told Mr. Brown and told the Court that you got him in Congressional in about a month. A. Yes.

58 Q. Didn't this condition improve after this little boy got in the school? A. Yes, it improved, you know, when he did realize he could attend a school where there was no question of a difference as to who he was.

Q. I ask you, Mrs. Gonzales, in the material that was sent you from the school, do you recall ever receiving that type of a pamphlet from Fairfax-Brewster? A. Yes.

Q. And for the purpose of identification, so we may give it to the Court, will you tell us what it purports to be, please? A. "Fairfax-Brewster School Parents' Handbook."

Q. All right.

And that came to you when? In which year? In '68 or '69? A. '69.

Q. '69? A. Uh-huh.

MR. McDONALD: Your Honor, I am just going to offer this, but I will have it marked for identification.

THE COURT: Isn't that Defendants' Exhibit 2?

Is that Defendants' Exhibit 1 for identification?

* * * * *

Q. Now, did you indicate on your application anywhere that you were applying not only for first grade but

64 also for summer camp? A. Yes.

Q. You did write that into your application? A. I believe there was, you know, a separate form that you filled out for the summer camp.

Q. You think there was a separate application and not this yellow one; is that right? A. I don't remember clearly, but, you know, I do know that somewhere along

the line it was indicated that I would have Colin attend both the summer camp and the school.

BY MR. KOUTOULAKOS:

66 Q. Now, as I understood your testimony, Mrs. Gonzales, you never went to the Bobbe School? A. No.

Q. You never called them? A. No, I didn't.

Q. You never filed any application – A. No.

Q. – of any type?

Neither did your husband? A. No.

Q. Of any type? A. No.

Q. You never paid any registration fee of any type? A. No.

Q. You never executed a medical certificate? A. No.

Q. Now, as I again understood your testimony, you indicated that this series of events with reference to the application – I am concerned with the Bobbe School

67 now – was sometime in '69, was it? A. Yes, it was.

Q. Now, in your suit papers, that is, where you filed your suit through your lawyer, you said it happened sometime in June of '69; in that correct? A. Yes.

Q. In your deposition you said it happened in May of '69.

Which date do you have in mind? A. Well, it – it's possible that it was sometime in late May or early June.

Q. Well, pick the date so we'll know what date. A. Well, it's kind of hard to because we had just, you know, got the rejection from Fairfax-Brewster. We tried to contact Bobbe's, and I'm trying to sort of base, you know, my memory on the time that we got Colin into Congressional, because at the time we were faced with the, you know, problems of just where, I mean, we would have him settled.

Q. So what you're telling us is, you don't remember the date? A. I don't remember the exact date.

Q. All right, fine. That's all. Thank you.

Now, at the time you say you were concerned –

If it was in May, then this youngster would have been in another kindergarter school? A. Yeah. He was still attending Crossroads.

68

Q. At the time you say you got interested in Bobbe's, this boy was in another school? A. He was still in Crossroads.

Q. So he lost no time from school? A. No, he did not.

Q. Then after that, he went to Congressional? A. Yes.

Q. He lost no time from school? A. Yes.

Q. Then thereafter, he went to parochial school? A. Yes.

Q. He lost no time from school? A. Yes.

Q. And you already told us this boy is a well-adjusted youngster? A. Yes.

Q. No question about that? A. Yes. I tried to do the best I could.

Q. You answered my question. Stick with my question.

You answered, yes, no problems? A. Yes.

* * * * *

74

Q. Now, at all times you had a public school available to your youngster, if he desired to go there; isn't that correct? A. Yes, right.

* * * * *

77

Q. Now, Mrs. Gonzales, you just invite people in your home that are friends of yours? You don't open your house to everybody, do you? A. I hope not.

MR. KOUTOULAKOS: Fine. Thank you.

That's all I have, Your Honor.

THE COURT: Counsel for intervenors have any cross-examination of this witness?

MR. LEONARD: No, Your Honor.

THE COURT: Any redirect?

MR. BROWN: Just a couple of questions, Your Honor.

REDIRECT EXAMINATON

BY MR. BROWN:

Q. Mrs. Gonzales, when you made your application for Colin at Fairfax-Brewster School, were you asked to supply a record of his previous schooling at the Crossroads School? A. No, I was not.

Q. Was anything ever said to you, prior to his application being denied, that they wanted some information concerning his private schooling? A. No, no.

78

Q. I show you Defendants' Exhibit 2, which is the parents' handbook for the year 1969-1970, which has been identified previously as the one that you received in the mail in 1969.

Now, this is the section you have read, if I'm not mistaken. It's headed "Previous Records"; – A. Right.

Q. – is that correct? A. Right.

Q. And would you read that again. A. "Previous Records: Grade school applicants must submit report cards and all other pertinent records from the school previously attended."

Q. What does the next sentence say – the next paragraph? A. "Entrance Examinations: If previous scholastic records are inadequate or questionable entrance examinations will be given. The fees are $10.00 for a single session and $7.00 for each additional session, payable in advance."

Q. I want to show you again this Defendants' Exhibit – looking still at Defendants' Exhibit 2, what does this say that this is? A. "Fairfax-Brewster School

Parents' Handbook, 1969-1970 Year."

79 THE COURT: I can't hear the witness, Mr. Brown.

THE WITNESS: "The Fairfax-Brewster School Parents' Handbook, 1969-1970 Year."

BY MR. BROWN:

Q. Now, I show you another document with a blue cover, and will you read what this says. A. "Fairfax-Brewster School Handbook, 1971 to 1972 Summer Day Camp."

Q. Is it your understanding, then, from this that the 1969 document is a – the handbook only for the school, whereas here it indicates on the blue document that this is the handbook for the school as well as the summer camp? A. Right.

Q. Now, reading the document that you – Defendants' Exhibit 2, then, when it talks about a requirement that previous scholastic records be submitted, do you read that as applying only to the school? A. Right.

Q. Do you read it as being – does it say anything in here about it being a requirement for his admission to the summer camp? A. No.

Q. Would it be your understanding as a parent that

80 the child's previous scholastic record would be an important matter for his admission to the summer camp? A. No.

Q. I show you a document, two pages.

Would you identify the two pages, please? A. Fairfax-Brewster School.

Q. Just say what they are, first. A. This – this is the rejection form that we received from the school. It reads: "The school is, at this time, unable to accommodate –" –

Q. Excuse me just a minute.

What is the second page? A. Second page appears

to be the front of an envelope addressed to "Mr. & Mrs. Raymond Gonzales, 6030 Vista Drive, Falls Church, Virginia," from the Fairfax-Brewster School.

Q. Now, what does it have on the top of the page here? A. It is an emblem of the Fairfax-Brewster School, 5860 Glen Forest Drive, Bailey's Crossroads.

Q. Would you read it, please, starting with the first line. A. "Date May 16, 1969

"Subject: Student Placement Application.

"The school is, at this time, unable to accommodate

81 the application of Colin A. Gonzales for Safari Summer Day Camp."

And there is an "X" in the box here.

"Your check –" –

"Your check submitted with form is hereby returned.

"Also enclosed is the medical form which you so kindly had completed in advance.

"Sincerely yours."

It appears like Olga M. Reiss, registrar.

I'm not sure of the name.

MR. BROWN: I'd like to have this identified as the next plaintiffs' exhibit and admitted into evidence.

* * * * *

82 Q. What is this document, then, Mrs. Gonzales?

A. It appears as a form. you know, that the application was rejected.

Q. For what? A. For the Safari Summer Day Camp.

* * * * *

87 RAYMOND GONZALES, called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. Mr. Gonzales, are you the husband of Margaret R. Gonzales, who just testified? A. I am.

Q. Will you indicate where you work and what your occupation is, please? A. I work with United Air Lines at National Airport. I am a passenger service agent.

Q. You have heard your wife testify about the circumstances under which you applied or, rather, sought admission for Colin to Fairfax-Brewster School in the spring of 1969, and she has testified that he was rejected.

Would you describe what happened after you learned
88 of Colin's – after you received word of Colin's rejection by the Fairfax-Brewster School? A. Well, I happened to – I was at home at the time and I received the mail from Fairfax-Brewster School and I read what it contained and stating that – the rejection. I immediately called Fairfax – Fairfax-Brewster School.

Q. Who did you speak to? Do you know? A. I spoke to – it's either a colonel or Captain Reiss, and I mentioned what I was calling about, that my son was rejected at the school, and he went on to state –

Well, I asked him what the reason was. He went on to state that, "Well, we are not integrated, so your son cannot be accepted."

I was really stunned because it was the last thing on my mind that, you know, that was the reason for the rejection, because previously, when we went to the school, there was nothing to indicate the question of race, you know.

I told him, in this day and age, the year 1969, I mean I really can't believe this still happens.

He says, "Well, these are the rules of the school"; and as an afterthought, he mentioned, "If you're interested, I understand Congressional Preparatory School integrated this year. You can apply there, if you wish."

89 Q. Did your conversation – or did you consider that the rejection of Colin applied both to the summer camp as well as to the school?

MR. McDONALD: Well, that's a leading question, Your Honor. I think he ought to –

THE DEPUTY MARSHAL: Stand up, sir.

MR. McDONALD: Excuse me, Your Honor.

I think it is a leading question.

THE COURT: Objection overruled.

THE WITNESS: At the time I felt the rejection was for both the camp and the school.

THE COURT: Did he say anything that would indicate that it was one way or the other?

THE WITNESS: No. There was no differentiation made known.

BY MR. BROWN:

Q. What did you do after that telephone conversation? A. Well, it took me awhile to recollect myself; however, sometime after, figuring for myself, well, what recourse do I have or what can I do, I called up the Department of Health, Education and Welfare and spoke to someone from the Education –

* * * * *

90 Q. What was your purpose in calling HEW? A. To find out from them if – if the question of segregation still exists as far as schools are concerned.

Q. You know what office you spoke to there? A. It was some section of the Education – Education Department.

* * * * *

91 Q. Who made the contact with Bobbe's School? Was it you or your wife? A. I did.

Q. And what was the nature of that contact? A.
92 It was a telephone call to Bobbe's School.

* * * * *

Q. What was the purpose in making the telephone call – your purpose? A. Well, to get information for the admission of Colin to the school.

* * * * *

93 Q. How did you know how to call Bobbe's Private School? A. Bobbe's School has an ad in the yellow pages of the telephone directory.

Q. And did you look up the telephone number? A. Yes. That's how I got the information.

Q. All right.

When you called, do you know who you spoke to? A. By name, no, but I asked for the principal of the school.

Q. Do you know what time of day it was or when it was, roughly? A. It was in the morning, around ten o'clock.

Q. When? At what – roughly the date. A. It was a weekday. I can't say what day of the week it was.

Q. I mean, what date? About when was it? A. Oh, the date.

This is around the third week of May '69.

Q. Did you speak to a man or a woman? A. It was a man.

* * * * *

94 Q. Now, can you relate the nature of the telephone conversation that you had with the man who you spoke to at Bobbe's School? A. I asked him, "I'm interested in enrolling my son at your school, however, I would like to know if you school is integrated." I was told that "We accept only members of the Caucasian race."

Well, the impact was not as severe as the initial one with Fairfax-Brewster; however, I told them, "Are you sure this is your policy?" you know. He says, "Yes." I said, "Thank you," and that ended the conversation.

* * * * *

Q. Did you discuss the problem with Colin? A.
95 On Bobbe's School, no, we – I did not.

Q. Did you discuss the rejection by Fairfax-Brewster with Colin? A. Yes, I did.

Q. What did you tell him? A. I told him, "Well, you can't go to Fairfax-Brewster School because the rules of the school states that –" – "well, their policy is that they do not accept black children there," and the fact that he was all prepared and sort of very enthusiastic about the school, this came as a surprise, you know, to him. Say, "But, daddy –" –– well, you know, "How come I didn't –" – I mean, "I see," you know, "boys and girls there and," you know, "why –" – "why wouldn't they accept me in the school?" And I told him, "Well, see, we're different than what they are and, as a result, these are the rules and," you know, "you can't attend."

Well, he was, you know, disappointed because I had mentioned also, "Well, we will have to try to get another school," and he mentioned, "Well, this one is so nice," you know, because he had been there and he had

seen what the facilities were and I know that he was upset and – well, I told him, you know, we will have to try to get him to another school.

Q. Did you grow up in Trinidad, as your wife did?

96 A. Yeah.

Q. And when you lived during your period in Trinidad – during your youth in Trinidad, had you had much experience – direct experience with racial discrimination?

A. There was no racial –

Well, no, there was no problem at all.

Q. Since you have come to this country, been living here for about six years, had you encountered racial discrimination personally here? A. No, I did not.

Q. This experience with these two schools, was this the first time you had experienced it in this country?

A. Yes, it was the first.

* * * * *

97 CROSS-EXAMINATION

BY MR. McDONALD:

* * * * *

103 Q. Did it make any mention as to whether it was for the first grade or for the summer camp? Do you know?

A. The application – the rejection form stated rejection as far as the camp?

Q. To what? A. The camp.

Q. To the camp? A. Right

Q. And was it the rejection from the camp that got you so upset? A. The rejection, yes. Well, the rejection per se, you know, as far as I'm concerned.

Q. Was it the summer camp that got you so upset? You say, per se, it did. A. It was the rejection.

At the time – I felt it included the camp and the school.

* * * * *

104 Q. And did you then get in touch with someone at the school? A. Yes, I did.

Q. And I think you said you talked to a man who identified himself as a colonel. A. Either colonel or captain.

Q. I direct your attention to your deposition that was taken, at which time your colonel was present, on Tuesday, April 10, 1973, in this cause, and you said –

I think this is your own counsel examining you.

MR. NEWTON: Page number.

BY MR. McDONALD:

Q. Page 32 of the record.

"You mentioned that the man named Reiss – you referred to him as Colonel Reiss, is that a name that you have learned since, as to his name?

"Answer: No, I remember the word, 'colonel.' As a matter of fact, I remember his using 'colonel' and not his last name. I remembered most colonel and not his last name, but I remember colonel."

Question by your counsel: "Could it have been any other rank?

105 And your answer was: "No."

Now, you were positive on the date of this deposition, were you not?

You testified under oath that your response to that was, no, it was a colonel, and today you testified that he could have been a captain. A. That is correct.

Q. Now, you don't know yet who it was you talked to; is that correct? A. As far as the person's rank, there is a bit of doubt, but the name Reiss is still in my mind.

Q. Oh, I am not talking about Reiss now, Mr. Gonzales. I am talking about the description of Reiss by the word "colonel" or "captain."

Is it not a fact that, under oath, you told us it was a colonel? A. Yeah, I did.

* * * * *

111 Q. In other words, someone that you talked to there, when you called, told you about his rejection? A. No, no, no, not – no. I spoke to colonel or Captain Reiss. That's the person I spoke to. He told me that, you know, that was his name.

* * * * *

BY MR. KOUTOULAKOS:

112 Q. Mr. Gonzales, I am only concerned with the Bobbe School. And I believe you told us that the youngster was not informed anything about the Bobbe School, that you were only concerned about Brewster; is that correct? A. I was only concerned about Brewster?

Q. Well, in the sense of telling the youngster about it. You never told him anything about Bobbe? A. Well, I felt the impact of Brewster, you know, was enough.

Q. Yes. So you never said anything about Bobbe? A. I didn't tell him the results, no.

* * * * *

118 Q. Now, with reference to the school, you had never called that school before, had you? A. No.

Q. And you couldn't recognize the voice that was on the other end of the telephone, could you? A. I mean, this I know.

Q. Then you don't know who you were talking to? A. At the time, my impression was the principal of the school.

Q. I didn't ask you for your impression.

You didn't know who you were talking to? A. No, I didn't know the person.

Q. You never talked to that party before? A. No, I did not.

Q. You never called the Bobbe School before? A. No.

119 * * * * *

Q. Well, even since, you never called that school again? A. No.

Q. So you only had the one telephone conversation? A. Right.

Q. Now, did you ask those people about what it takes to get into the Bobbe School, if, in fact, it was the Bobbe School you called? A. I never got around to that.

Q. You never did? A. No.

Q. They never told you about what you'd have to do; that is, get an application and a medical form? A. No. I knew all of that. I knew all of that, but I didn't ask
120 them.

Q. You knew you had to do all these things? A. Sure, sure, sure.

Q. Let's see what you knew.

You knew you had to fill out and file an application; is that right? A. Sure.

Q. You had to fill out and have a medical examination; is that correct? A. Right.

Q. And you had to pay a registration fee; is that correct? A. Right.

Q. Then if you knew that, you knew that on the application form of Bobbe there is no place in that that asks for the color of the child or the race of the child? A. That is correct.

Q. So race had nothing to do with the application form; is that correct? A. That is correct.

* * * * *

123 Q. Did you, for that matter? Your testimony so far doesn't even indicate to me that you even told the other party that you were, in fact, a black person. They could have thought you were Spanish, isn't that right, with your name of Gonzales? A. Well, I didn't mention my name.

Q. You never told them you were black either, did you? A. Of course I – no, I didn't tell him I was black. I asked him –

Q. No, you didn't tell him you were black. A. No, I didn't tell him I was black. I asked him –

Q. And the name Gonzales could well have imparted a Spanish flavor? A. Well, he didn't know my name.

Q. I didn't ask you that. Answer my question.

When you gave the name Gonzales, whoever it was may have thought you were Spanish? A. That's a possibility.

Q. You don't know whether they accept Spanish children or not?

MR. BROWN: Objection. He testified he didn't give his name and you put words in his mouth by saying he gave his name.

MR. KOUTOULAKOS: I thought he answered my

124 question that he did.

BY MR. KOUTOULAKOS:

Q. Are you saying you never gave your name? A. I never gave my name.

Q. So they didn't reject Colin Gonzales as such, if your testimony is correct; is that right?

I mean, you can't cut it both ways, Mr. Gonzales. Either you told them or you didn't. A. I'm not sure what you're asking.

Q. If you never told them you were Mr. Gonzales, then you never could have been rejected, that is, by applying as Mr. Gonzales? A. Right.

Q. So, then Mr. Gonzales was never rejected by that school: is that what you're saying? A. That is correct.

Q. I believe you already told us you never discussed the Bobbe School matter with your youngster; isn't that right? A. Right.

Q. Now, you don't remember the telephone number now, do you? A. Offhand, no.

* * * * *

127 Q. And that's the only contact, if, in fact, you called the Bobbe School? Just the one phone call? A. That is correct.

Q. Nothing was ever done to follow it up? A. No.

Q. Now, Mr. Gonzales, shortly after that call, you got some stuff in the mail – applications and brochures – from the Bobbe School, didn't you? A. Well, we –

Q. Just yes or no. Did you? A. Yes, yes.

128 Q. Did you fill them out? A. No.

Q. What did you do? Throw them in the ashcan? A. I think so.

Q. But after your phone call, you did get some forms to fill out, if you wanted to? A. There was a brochure. I don't know if it was received after or before, but we did get some brochures.

Q. You testified in your deposition that it was received after.

Now, do you want to change that? A. No, I don't

want to change it.

Q. So you had to receive it afterwards, if you told us the truth the first time; isn't that right? A. Well, it could have been after the phone call.

Q. But you didn't see fit to follow through on whatever that brochure and whatever forms you got required you to do? You didn't do that? A. That is correct.

Q. And this was in '69? A. That was in '69.

Q. And all of a sudden you developed, I guess, these problems and filed suit in '72, some three years later; is that correct?

* * * * *

130 Q. Now, there was a public school available to this youngster under the same conditions as all other youngsters, same opportunities? A. Right.

Q. And he could have gone there under the same conditions that all other youngsters would go to a public school, isn't that right, had you wanted him to go there? A. Under the same conditions, yes.

* * * * *

133 Q. Later in your testimony, Mr. Gonzales, if I recollect it correctly, you stated that you wanted Colin to have a Catholic education? A. Sure, we did.

Q. And that has been true since the beginning, has it
134 not? A. Sure.

Q. Why do you want your son to have a Catholic education? A. Because we are Catholic.

Q. Well, what's the difference between public school and a Catholic education? A. Well, at least religion is taught in Catholic school, and we are Catholics as such. We'd like him to continue in the Catholic faith.

Q. In other words, you'd like your son to have a special education in the Catholic faith? A. Yes.

* * * * *

135 REDIRECT EXAMINATION

BY MR. BROWN:

Q. Mr. Gonzales, you testified that about the time you made this inquiry to Bobbe School, you were unsure whether it was before or after you had received some literature or brochures in the mail from Bobbe's School. Is that correct? A. Yeah.

Q. Did you receive that material in response to a request you made, or how did it happen to come to you? A. No. This was just – these things were dropped in the mailbox. They were addressed to resident of 6030

Vista Drive. They weren't addressed to me.

THE COURT: Who were they addressed to?

I didn't hear the answer to the last question.

THE WITNESS: The brochures were dropped – Well, they were addressed to resident of 6030 Vista Drive. All the tenants received one in the mailbox.

BY MR. BROWN:

Q. Is that the kind of mail you get frequently –

A. Right.

Q. – from people who are advertising businesses?

A. Sure.

136 Q. So when you had been told over the telephone that Colin couldn't attend that school because of his race, did you submit an application, nevertheless? A. No, I did not.

Q. Why? A. Because my – my – at least my child is black. I knew – well, from what I was told on the phone, it made no sense, you know, making out – filing an application.

* * * * *

137 MAJORIE BRYANT, called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. Will you state your name and present address, please. Marjorie Bryant, 905 Creighton Court, Sterling Park, Virginia.

Q. Prior to living in Sterling Park, where did you live, Mrs. Bryant? A. 3405 Glen Carlyn Drive, Falls Church, Virginia.

Q. What part of the –

Where is that, generally? A. It's in the Culmore – Bailey's Crossroads area.

Q. Where are you employed? A. Department of the Army, Pentagon.

138 Q. And what type of work do you do? A. I am a clerk-typist.

Q. Did there come a time that you learned about a school known as Fairfax-Brewster School? A. Yes.

Q. Would you explain how that happened and what contact you had with that school? A. Yes.

Q. When was this?

Let me ask you that.

When was this? A. It was the middle of January 1972.

Q. And what did you do in the middle of January 1972 in relation to Fairfax-Brewster School? A. Well, I needed a nursery for my son, who is four years old, and I've seen that school behind the Safeway that I always shop, and I called and I asked for information concerning the enrollment of a four-year-old boy, and I asked the price and the requirements, and at the end of the discussion I told the lady that my four-year-old son was black, and she said she was sorry, that he was –

MR. McDONALD: What?

I didn't hear that, please.

BY MR. BROWN:

Keep your voice up, please.

At the end of the conversation, what happened? A.

139 At the end of the conversation, I told the lady, or whoever I talked to, that my son was black.

Q. And what did she say? A. They did not accept –

Q. Beg pardon? A. She told me they did not accept –

Q. Did not accept who? A. My son.

Q. Why? A. Because of his race.

Q. I see.

Now, you say you spoke to a woman.

Now, when you made this telephone call, where had you gotten the telephone number? A. I got if from the telephone directory, the yellow pages.

Q. And you're certain that you spoke to a woman? A. Well, I said a woman, but I'm not sure who I spoke to.

Q. Was it –

Had you – you had gotten –

You got –

You say you got a certain amount of information about school, though, before you got to that question? A. In regards to the requirements, the age requirements, and the time.

Q. Right. A. And the price.

Q. What is your son's name? A. Grady Bryant.

Q. And what is the date of his birth? A. October 28, 1967.

* * * * *

142 Q. Did you make inquiries to other schools, then, after having this conversation with Fairfax-Brewster? A. Yes. I called the Bobbe School on Carlyn Spring Road.

Q. And how did you get the telphone number? A. Well, I got the telephone number from the telephone directory, the yellow pages, and I knew where the school was located.

Q. Was it located near your residence? A. Yes.

Q. About how near? A. Approximately a mile or less.

Q. Now, when you called Bobbe's School, who did
143 you ask to speak to? A. I called one afternoon and I asked to –

Well, this is what I said. I said, "I need information concerning you school," and I spoke to a man.

He said that the information office was closed and to call back the next day.

So, I called back the next day and I asked for information, and they told me that they charge according to the school age, the child age, and I asked if they had a vacancy for a four-year-old boy, and they said, yes, they only had one.

* * * * *

Q. Continue. A. They said, yes, they had one. And so I said, "You know, I'm –"–"my son is black."

She said, "Well, we do not accept them. You can call –"–

She recommended – whoever I talked to – I'm saying "she," but the person I talked to said, "Call Congressional School on Sleepy Hollow Road, because they will accept mixed races."

* * * * *

145 CROSS-EXAMINATION

BY MR. McDONALD:

Q. When did you say you called?

When did you state that you called the Fairfax-Brewster School for information about entering your child? A. The middle of January 1972.

Q. And was that the time that they had just closed down the Crossroads School? A. Yes.

Q. How long had he been at Crossroads? A. Approximately a year.

Q. Now, when you called the Fairfax School –

First of all, let me ask you, how did you come to call Fairfax-Brewster? A. Well, I was in need for a school and I had seen that school in the back of Safeway, so I went on and called there.

* * * * *

147 A. I told them I needed information concerning the school because I was interested in enrolling my four-year-old son.

Q. All right.

And did they give you some information? A. Yes.

Q. Now, who brought up the question of race? You? A. Yes. I told them that my son was black.

Q. Why did you feel called upon to tell the school that you were trying to get a little – a boy –

It was a boy, wasn't it? A. Yes.

Q. Why did you feel called upon, without even an application or anything, to tell them that the child was black, on the telephone? A. To save embarrassmen.

Q. How would you be embarrassed?

Answer me that question. A. Well –

Q. How would you be embarrassed? A. My child would be hurt.

* * * * *

181 THE COURT: My present view of it is that I would not think it relevant, but I will hear you, if you proffer whatever it is going to be.

MR. LEONARD: All right.

Number one, our first point was, as I stated, the Norwood and Green cases – they have determined that we may maintain these schools and that we may not have

any state-aid in doing so, either by tax exemptions or by textbooks.

Our point number two: We state that section 1981 is inapplicable on its face because it is limited to the rights which are enjoyed by a white citizen, and there is no white citizen who has any right of forcible admission into these schools.

Number three, if 1981 is to be interpreted as a compulsory admission to any organization which is racially exclusive in any jurisdiction, it exceeds the constitutional
182 limits of congressional power.

That's a point of law. We have no evidence on it.

Point number two, which I gave you, is essentially a point of law based on the cases and the memorandum which we have submitted to Your Honor.

Point number one is a question of law.

So, as to those first three points, Your Honor, we have neither testimony nor witnesses.

Now, we come to point number four.

THE COURT: Four or three?

MR. LEONARD: Well, three was the question of the interpretation as the plaintiffs claim it to be which would excede congressional powers –

THE COURT: All right.

MR. LEONARD: – because it would give the plaintiffs a right to invade the freedoms, under the First Amendment of the parents who send their children to the intervenor schools.

So, we come to the fourth point, and that is essentially a problem of law; namely, whether the parents who send their children to a school which is racially exclusive, and do so deliberately for the reason that that's the kind of school they want, are in fact exercising their First Amend-
183 ment rights of association and express in the belief, which

the Supreme Court in Norwood stated was, desegregation is of value in education, as a private belief, not as a public belief.

* * * * *

189 MR. LEONARD: Well, may I ask, if there be witnesses to the contrary, then I will have to hold these.

You say he is not conceding it to be true as a matter of fact, so there is no cross-examination.

THE COURT: I gather there are no witnesses.

MR. BROWN: We have no other witnesses.

THE COURT: All right. Let me make sure, for the record, that I am fairly stating your –

MR. LEONARD: Correct.

THE COURT: – what now amounts to a proffer, I expect.

One is that the intervenor parents of children who attend the schools represented by you, the intervenor organization, act rationally in holding the belief that they do that segregation in the schools – private schools or "private schools"
190 in holding the belief that they do that segregation in schools does produce a better level of education or higher level.

I don't know whether I stated it correctly.

MR. LEONARD: That's correct; and lower disciplinary problems.

THE COURT: And that, secondly, the schools which are involved in your membership are competent educational facilities, having a high level of education, with low disciplinary problems, both of which your witnesses would testify to are causally related to the segregated policies followed by those schools.

MR. LEONARD: That is correct, Your Honor.

THE COURT: All right. I just wanted to make sure –

MR. LEONARD: Purely as a matter of procedure in past trials, the difficulty I seem to have is that one makes a proffer only when the admission of certain evidence has

been denied as to relevance or otherwise; and here, as I understand it, it is before the Court as if so testified.

THE COURT: Yes, with the understanding that I may still rule it is irrelevant; that I haven't ruled that way yet,
191 but that I have it under consideraton, and the motion is to remove it is irrelevant, and I suspect that motion will be – or to strike it as irrelevant.

MR. LEONARD: Well, under these circumstances, then, couldn't we make a stipulation, Mr. Brown?

All right.

It is stipulated that it would be so testified, and that's it?

MR. BROWN: I have nothing further to say. Judge Bryan has stated –

THE COURT: It is stipulated by Mr. Brown that if these witnesses would testify, that they would testify to the two enumerated propositions.

MR. LEONARD: All right, Your Honor.

* * * * *

194 SANDRA McCRARY, called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. Will you state your full name and address for the record, please. A. Sandra McCrary, 9849 Lake Point Drive, Burke, Virginia.

Q. Are you employed, Mrs. McCrary? A. Yes, I am.

Q. Where do you work? A. I work at the Naval Air Systems Command in Jefferson Plaza, Arlington, Virginia.

Q. And what is your occupation? A. I am an equal employment opportunities specialist.

Q. How long have you lived at your present address in Burke, Virginia, Mrs. McCrary? A. Since March 1,
195 1973.

Q. Prior to that time, where did you live? A. At 6062 Belview Drive, Falls Church, Virginia.

Q. Where is that located? A. It is located approximately in back of the Culmore Apartments, just a little ways down on Route 7 from Bailey's Crossroads.

Q. How long have you lived at that location? A. About four years.

Q. Do you have a son named Michael, who is a plaintiff in this suit? A. Yes, I do.

Q. What is his age? A. He was three on July 7, '73.

Q. So his date of birth was July 7, 1970? A. Yes, it was.

Q. What is his race? A. He is black.

Q. What is your husband's race? A. He is black.

Q. Did there come a time when you learned of a school known as Bobbe's Private School? A. Yes, sir.

* * * * *

196 Q. Had you ever seen any advertisements in the mail
197 or phone book, or anthing of that sort? A. Not in

the mail, but I did see it advertised in the classified section of the phone book.

Q. Did there come a time when you wanted to enroll Michael in Bobbe's Private School? A. Yes, sir.

Q. When was that? A. Approximately the first week in August '72.

Q. Did you make some contact with Bobbe's School? A. Yes, I did.

Q. In what way? A. A phone call.

Q. Can you tell me who you spoke to? A. I cannot tell you his name. It was a male that answered.

Q. Did he identify himself? A. In all honesty, I cannot recall if he did or did not.

Q. How did you get the telephone number for the school? A. Through the classified.

Q. Will you relate the nature of the telephone conversation?

* * * * *

198 A. Upon calling the school, I inquired about their policies, if transportation was provided, the price, whether there were hot meals provided, various questions centering around the policy of the school, also the matter of toilet training.

I had heard that Bobbe's School did provide toilet training for an additional fee.

I posed this question, and the gentleman told me, yes, and it was for an additional fee. I believe the fee stated was approximately $35 per week.

At the end of the conversation, I stated something to
199 the effect, "Incidentally, you're integrated," and he stated, "No, we are not."

So to clarify this, I stated, "You mean you do not accept black children?" and the gentleman said, "I'm

sorry, we do not."

I said, "Thank you," and hung up, and that was the end of the conversation.

Q. Was anything else said to you in the phone conversation which would be a basis for your believing that Michael would not be acceptable there other than his race? No, sir.

* * * * *

200 Q. Did you know anyone else whose child went to Bobbe's Private School? A. Yes, sir, a neighbor of mine.

Q. A neighbor? A. Yes, sir.

Q. What was her name? A. Mrs. Gene Price.

Q. Did – she had – what was her –

Who was her child that went there? A. His name was Samuel Price, and he was approximately three months younger than my son.

Q. And when did he attend the school? A. He was accepted about a week or two before I placed the phone call. It's not exactly clear just how long.

Q. What was his race? A. White.

Q. Was Samuel toilet-trained? A. No, sir, he was not.

* * * * *

202 Q. What other specific arrangements did you make to enroll Michael in school that year, or did you? A. Upon calling one or two other schools and having the same difficulty, one, that he was not yet three years old and, two, that he was not toilet-trained, we were really caught up in that we needed a place to send Michael. So
203 his grandmother offered to take care of him in the meantime while we could find another place.

203 Q. Well now, this was in August of 1972.

Through 1972 through 1973, did he attend another school? A. Yes. We located the name of a woman who operated a home nursery school and we enrolled Michael there.

Q. Where is that located? A. That is located on Oakland Drive in South Arlington.

Q. What is the name of that school? A. Green's Home Nursery.

Q. About how many miles or how far from your residence was that located? A. My residence now or my prior residence?

Q. Well, your prior residence. A. I'd say approximately – very bad at this – ten miles.

Q. So when did he first start going, then, to Green's Home Nursery? A. It was in September.

Q. So from September until –

Does he still go to that school? A. Yes, sir, he does.

204 Q. And you moved away from Bailey's Crossroads in March; is that correct? A. Yes.

Q. So from September to March you transported him, or did you, or did they provide bus transportation? A. No. I transported him.

Q. You transported him to Green's Home Nursery.

How far from your home was Bobbe's Private School located – your residence at the time that you made this inquiry? A. Approximately a mile.

Q. Was this boy, Sammy Price –

Where did the Prices live in relation to you? A. Right next door, in the next apartment building.

Q. In another building? A. Yes.

Q. Did Michael know the boy, Sammy? A. Yes. We had a kind of reciprocal agreement on baby-sitting,

and I would baby-sit Sammy and Mrs. Price would baby-sit Michael. So, they were quite good friends.

* * * * *

205 Q. Well, continue.

Michael knew Sammy and Sammy was going to the school.

Now, do you think Michael had any reaction to that? And if so, would you explain why you had reason to be-
206 lieve so? A. At the time they would play together in the afternoons, my working hours were different than Mrs. Price's, so I came home earlier than she did. Michael would sit by the window and wait for Sammy to come home. They didn't say very many words. They could say "Buddy," and that's what they called each other and that's what I heard until Sam would come home from school.

Q. Now, would you describe – describe how you felt as a result of learning that Michael could not attend Bobbe's School?

What was your reaction?

* * * * *

207 THE WITNESS: Well, initially I was shocked and hurt, and then when I thought about it, in a strange way I was pleased because Michael was not at the level of awareness that I would have to sit him down and tell him, "You cannot attend this school because."

Eventually, I became angry, and that's when I decided to take some sort of action.

BY MR. BROWN:

Q. Did you discuss Michael's inability to attend Bobbe's School with your husband? A. Yes, right after the phone conversation.

Q. Did you discuss it with friends and co-workers?
A. Yes, I did.

Q. What was they reaction? A. Sympathetic.

Q. How did your husband react to Michael's inability to attend Bobbe's School on the basis of his race? A. My husband became very angry. What he stated at the time was that he felt that he had left demoralization and embarrassment behind him, that he had managed to go to school and be employed and progress in his job, and he had hoped his son would never have to be submitted to something like this.

I believe he said something to the effect, "What was the use?"

* * * * *

BY MR. KOUTOULAKOS:

218 With reference to your deciding to enter your youngster in school, as I recall, you said he was two years old at the time; is that correct? A. Two years, one month.

* * * * *

222 And then when you called the school, you don't know who answered on the other side? You assume it was somebody from the school; is that correct? A. Yes, sir.

Q. You had never called that school before? A. No, sir.

Q. And you had never talked to anybody at that school before? A. No, sir.

Q. So you really don't know who you were talking to?
A. Someone with a lot of information.

Q. But you didn't know who you were talking to, was my question. A. No, sir.

Q. Then, if they had a lot of information, they had to tell you, if in fact you called the school, that there were certain requirements to get into that school; isn't that
223 correct? A. We discussed primarily the policy.

Q. Well, let's talk about what it takes to get in, not what you primarily discussed.

Didn't they tell you what you have to do to get in, like filling out forms, getting a medical examination?
A. That was not discussed at the time. The gentleman told me that I would have to come in.

Q. And do what? – because you left that out in your direct examination.

What was it he wanted you to do now? A. He stated I would have to come in and fill out –

Q. And do what? A. – fill out an application.

* * * * *

224 Q. But even with that statement, you now tell us this person told you to come in and make out an application; is that correct? A. He told me I would have to come in and make out an application before I asked him if they were integrated.

Q. What else did he tell you regarding gaining entry into this school? A. Other than coming in and filling out an application, the rest of what we discussed was purely as I stated before: the policies of the school as far as meals, toilet training, and whatever.

* * * * *

232 Q. And this was the only contact you ever had with the school, just the one time; is that correct? A. Yes, sir.

Q. And your youngster, I believe you said, is a well-adjusted youngster? A. Yes, he is well-adjusted.

* * * * *

236 CURTIS L. McCRARY, called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. Will you state your name and address, please.
A. Curtis L. McCrary, 9849 Lake Point Drive, Burke, Virginia.

237 Q. Are you the husband of Sandra McCrary, who's just testified? A. Yes, I am.

Q. Are you the father of Michael McCrary? A. Yes.

Q. Did there come a time when you learned of a school named Bobbe's Private School? A. Yes.

Q. Did you or your wife have a conversation with someone concerning Bobbe's Private School? A. Yes. My wife did.

Q. Your wife did.

What kind of conversation or what – how did she talk to them? A. Well, she called them up and she – she asked whether they had toilet training and she asked about meals, the hours.

Q. You were in the room and she testified that you were in the room, when she made the telephone call; –
A. Yes, I was.

Q. – is that correct? A. Right.

Q. And you heard her talking? A. Yes.

Q. When she was through talking on the telephone,
238 did you learn that Michael could not attend Bobbe's School? A. Yes, I did.

Q. Did she tell you the reason? A. Yes, she did.

Q. What was the reason she said. A. Because of his race.

Q. How did you feel as a result of that? A. Well, I was angry; I was very angry, as a matter of fact. My wife was very upset.

It is a fact that during that time we really needed a baby-sitter. Bobbe's School was very close and, you know, it – just couldn't understand why, you, they wouldn't accept him.

I was very mad.

Q. Where did you grow up, Mr. McCrary? A. Atlanta, Georgia?

Q. Atlanta, Georgia? A. Yes.

Q. Where did you go to school? A. I went to school in Atlanta, Georgia.

Q. What education have you had? A. High school.

Q. Just high school? A. Well, I have had some formal training after I went to technical school.

239 Q. Technical school? A. Yes, and I had service training, schools in service.

Q. Where do you work now? A. Nimrex Corporation. It's a computer manufacturer.

Q. Whereis it located? A. The home office is in Sunnyvale, California, and we have an office here in McLean, Virginia.

Q. Is that where you work? A. I work out of there, yes.

Q. In McLean? A. Well, I work out of there. That's my office in this area.

Q. I see. What kind of work do you do? A. I am a computer engineer.

* * * * *

240 Q. When you, in the course of your job –

Well, let me ask you this.

How long have you lived in this Northern Virginia area? A. I have been here since '66 - 1966.

Q. And you moved here after coming from Atlanta? A. Well, no. I was stationed here in the Navy. I spent two years here in the Navy, and I got out in '68 and I have been here in a civilian capacity ever since.

Q. Well, since 1966, when you lived – the period that you lived here, have you had frequent experiences where you have been discriminated against because of race? A. No.

Q. Have you ever had any experiences? A. I have as a kid, growing up in Atlanta, but not since I went into service and after that, no immediate discrimination.

Q. None since you have lived here in the Washington area? A. Right, none that I know of.

Q. Was the experience that you had with Bobbe's the first exposure you had had to racial discrimination for
241 some time? A. It was the first time, you know, that it hit home. It immediately affected me.

Yes, that was the first time.

Q. What did you tell your wife or what did you say to your wife when you were discussing it? A. Well, at the time we were – like I say, we were very upset.

The fact – the fact was that we were really hurting for a baby-sitter. The baby-sitter we had was – was going back to school. So, we had to find some type of a sitter. We –

I take that back.

We had to find some type of a day-care for him. We didn't want the – this – we didn't want to go to an individual sitter again because we felt that Michael was of age where he should be exposed to more kids.

It's a proven fact that kids learn a lot more when they are around kids, and he was just beginning to talk a little bit.

Q. He was just waht? A. Beginning to talk, so–-

Q. Did you discuss your experience concerning Bobbe's School with co-workers? A. Yes, I did.

Q. What kind of conversations had you had with them
242 about it? A. Well, you get the – you know, you get the story, "Well, that's too bad; that's too bad. Why don't you move out here? We have integrated nurseries," and all that kind of stuff.

See, at the time we were trying to enroll Michael in a day-care nursery, we were also in the process of buying a home. So, several of my friends recommended that I move out to Montgomery County where they live, you know, and we wouldn't run into it, have any problem like this, and I could carry my nursery – I mean, carry my kid to the nursery with their kids.

MR. BROWN: That's all I have.

MR. KOUTOULAKOS: I just have a couple of questions.

CROSS-EXAMINATION

BY MR. KOUTOULAKOS:

244 Q. And I take it the little boy is now in the Green School, is he? A. He is in Green's Nursery, yes.

Q. And doing all right, I take it? A. He's doing fine.

Q. He seems to be well-adjusted, doesn't he? A. Yes, sir.

Q. Was there ever any attempt by you with reference to going to the Bobbe School and filling out whatever applications would be necessary? A. There was no need to.

Q. Well, was there an attempt?

Whether there was a need to or not His Honor will decide. A. Why should I further embarrass myself?

Q. In any event you didn't do that? A. No, I didn't.

* * * * *

249 OLGA M. REISS, called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McDONALD:

Q. Now, Mrs. Reiss, in testifying this afternoon, please, at all times, keep your voice up so His Honor and the reporter and all counsel may hear your testimony.

I ask you, initially, if you will state for the record your full name and tell us where you live. A. My name is Olga M. Reiss. I live at 3322 Prince Charles Court, Falls Church.

Q. Is that in Fairfax County? A. Fairfax County.

Q. And how long have you lived in that area? A. I have lived in Fairfax County for, oh, but about three years of my life.

Q. What is your marital status at this time? A. I am married.

Q. And what is the name of your husband? A. Robert S. Reiss.

250 Q. You have any children born of the union? A. I have one child.

Q. All right.

Now, are you related in any manner to Mr. Steuart A. Reiss, one of the parties to this litigation? A. Yes. He is my father-in-law.

Q. And what is his official capacity with the school at this time? A. My official capacity?

Q. No, your father-in-law. A. My father-in-law. He is the chairman of the Board of Directors of the corporation.

Q. All right. And your husband? A. And treasurer also.

Q. What is your husband:s name? A. My husband's name is Robert S. Reiss.

Q. Does he have any official association with this school? A. Yes, He is director of the school and also president of the corporation.

Q. How long have you been associated with this school? A. Since its beginning in 1955.

Q. All right.

Tell us, Mrs. Reiss, what type of school is the Fairfax-
251 Brewster School? A. Fairfax-Brewster School is a private educational institution, with a preprimary department composed of nursery through senior kindergarten and also elementary school department, grades 1 through 6.

Q. And where do you secure your students? What's the formula used for procuring students? A. Usually, for the very most part, our students come to us from word-of-mouth; in other words, parents telling other parents about the school.

Q. Do you select your students from any geographical area in the county or adjoining areas? A. Not necessarily, although most of them come from a farily close proximity to the school, but this is not necessary.

Q. Are most of them from the State of Virginia? A. Oh, yes.

Q. Does the school advertise in any way in any newspapers, magazines, radio or television, either for its summer camp or for its regular – A. No.

Q. – schooling?

Now, there has been some testimony here today – you may have heard it – about getting a number of the school from the telephone book. Do you list your school in the
252 telephone book? A. In the Virginia telephone book, we have a listing, and I believe it just tells a little bit about the school, –

Q. All right. A. – the fact that it is a private school and offers nursery through the sixth grade.

Q. Now, you say that you serve there as the registrar. And will you tell us just what duties are embraced by the registrar? What do you do there? A. My duties as registrar consist of each year preparing and revising and compiling all enrollment registration materials preparatory to enrolling children.

Q. Do your duties in any way require you to review applications with respect to educational backgrounds or ages or the things that go on an application? A. Correct.

* * * * *

253 Q. Now, there has been shown here today two pieces of material that have been marked Defendants' Exhibits 1 and 2, and I ask you: are these the pieces of material that would be sent to an applicant regularly in the course
254 of the procedure of the school? A. Yes.

Q. And will you tell us what Exhibit 2 is? A. This is the parents' handbook for the year 1969-70.

Q. And will you tell us what this is, please, 1? A. This is an informational brochure which could be used

for any year; could be used for many years, actually.

* * * * *

Q. I assume you are quite familiar with the contents
255 of this handbook, are you not? A. Very.

Q. Now, directing my question particularly to the educational requirements of students seeking admission to the school, first grade and up, I ask you if you will take this and look at page 2 and tell us if there is anything on that page with respect to any requirements that are necessary for a child submitting an application to the school for first grade. A. We have a section called "Previous Records" which states, "Grade school applicants must submit report cards and all other pertinent records from the school previously attended."

Q. Is that procedure followed in all cases in the first grade – where people are applying for first grade? A. That's correct.

Q. Now, do you recall personally or do you know whether or not these were ever sent to these people? I mean Mr. and Mrs. Gonzales. A. They would have had to be because this was the common procedure that we would follow when people would call us: we'd send them out.

* * * * *

260 Q. Now, what was the policy of the school with respect to first grades?

How many first grades did you have, as a general rule, up until 1969? A. From 1961 on, we had always had two first grades, but in 1969 we had only one first grade.

Q. All right.

Was there any particular reason for that that you –

Maybe you have told us, but was there any reason why, in '69 and '70, you were only going to prepare for one first grade group? A. Yes. It was not too good a year economically and we could see the handwriting on
261 the wall and we felt that it would be better to have one full first grade, one good first grade, than two first grades with just a scattered number of students.

Q. How many students were you contemplating taking into the first grade for the year '69-70? A. About 20 students.

Q. Have you made a computation of the students that were to come into the first grade class for '69 and '70? A. Correct.

Q. I hand you a paper, ask that you tell us what that is by way of identification. A. This was the first grade class for the 1969-70 school year.

MR. McDONALD: And I'd like to have this marked as an exhibit, and I will show it to counsel.

(The compilation was marked and received in evidence as Defendants' Exhibit No. 3.)

* * * * *

262 BY MR. McDONALD:

Q. Now, I ask you: this Exhibit 3 which you just testified to, how many students that were going into the first grade in '69 – the fall of '69 – came from your kindergarten? A. All but five came from our kindergarten.

Q. All right. Now – A. Our own kindergarten.

Q. What were the basic requirements – tell us that before we lose it – for a child – any child coming there

and applying for first grade? What did he need to get to be approved – for the school to approve his application? A. We would require, of course, that he come from our own kindergarten or that he would have had prior schooling in a kindergarten program which included a reading and numbers writing program.

Q. Now, what was your experience with children coming from day nursery schools with respect to qualifying for first grade in your school? A. A day nursery school is not a kindergarten. It is an entirely different thing, –

Q. All right. A. – and I would not consider that
263 sufficient background to go into our first grade.

Q. Now, the five that you have stated that were taken in, over and above your kindergarten graduates, were they qualified kindergarten people?

I mean, did they meet your test of qualifications?
A. Yes. All five had been through kindergarten programs.

* * * * *

270 Q. Let me ask you: did you know anything about the educational training with respect to kindergarten or anything about teaching – education given in that school by the people that ran that Crossroads School? A. To my knowledge, it was a day nursery, day-care center only. There was no kindergarten program.

Q. Now, is there any requirement that your own kindergarten students might measure up to certain readiness standards before being admitted to your first grade?
A. Yes.

Q. What would you do to determine, from time to time, whether even your own kindergarten graduates were

fit to pass or qualified to pass to the first grade? A. Well, of course, our kindergarten program is a very, very good one, and the children use workbooks all year, and in that way the teacher is able to see what they are doing to help them along, and she can tell if a child – if
271 she doesn't think a child is just going to be able to make it before the end of the year; and then in May we also give standardized ratings tests.

Q. All right. Now, let me go back.

You said that there were discussions. You put this application on Colonel Reiss' desk, that you and your husband Robert, who is the president of the school – you all discussed it; is that correct? A. Uh-huh.

Q. What was the nature of those discussions when you were discussing this boy's application for admission to your school? A. The – of course, we were discussing the idea that we – of only having one first grade class, and we could tell by the way the enrollments were coming in and also by other statistics that practically all of this class would be from old students. We could tell this, and that, therefore, there would be very, very few vacancies for any new students and we knew, by reputation, that the Crossroads Day Nursery simply did not have a kindergarten and we wanted to – we knew that we had a good bunch of children coming into that first grade. We wanted to have any other children coming from an outside source to have a sufficient previous education to allow them to compete successfully in that class.

Q. Now, let me ask you: was Colin Gonzales' applica-
272 tion in this meeting equated entirely on an educational background or did any other thing enter it that would have prevented or did prevent him from becoming a student in the first grade or even the summer camp in that

school? A. I would say that it had to be the educational background.

* * * * *

Q. Mrs. Reiss, let me ask you this question. Have any children, to your knowledge, applying for admission to Fairfax-Brewster, with only day nursery school training, every been admitted there? A. To first grade?

Q. To the first grade, yes. A. No.

* * * * *

273 Have you had occasion, in connection with the preparation for testimony here, to review your records and make a compilation of the non-Caucasian students that have been admitted to that school in the various years, with special reference to '69-70 and on down to date? A. Yes.

Q. Is that your own compilation from the official records? A. Yes.

* * * * *

276 Q. Had there been any male or female applications of the Negro race before Gonzales' application or since the
277 denial? A. No.

Q. Have any whites filing applications for admission there ever been denied admission? A. You mean whites?

Q. Whites. A. Yes, yes.

Q. And what would be the reasons, if you know? A. It would be our matter of policy. If we did not feel the white child could measure up to our standards, we would not accept him. Also, we might not accept him if we learned that he had an emotional problem or was abnormal in some way –

Q. All right. A. – or for physical reasons.

CROSS-EXAMINATION

BY MR. BROWN:

* * * * *

278 (The advertisement was marked and received in evidence as Plaintiffs' Exhibit No. 3.)

BY MR. BROWN:

Q. Would you say, Mrs. Reiss, that that advertisement accurately reflects the program that Fairfax-Brewster offers? A. Yes.

279 Q. And it states, does it not, that it has its private school, with nursery and kindergarten, grades 1 through 6; is that correct? A. That's correct.

Q. And it also states at the bottom of the ad that there is a Safari Summer Day Camp and a Totem Lodge Summer Program; is that correct? A. Right.

* * * * *

Q. You have testified concerning the 1969 parents' handbook for Fairfax-Brewster School. Right? A. Uh-huh.

Q. Now, you have testified concerning the paragraph on page 2 that refers to "Previous Records" – A. Right.

Q. – which –

Right? A. Uh-huh.

Q. Now, will you read what the following paragraph states. A. "Entrance Examinations: If previous scholastic records are inadequate or questionable entrance examinations will be given. The fees are $10.00 for a single session and $7.00 for each additional session,

payable in advance."

Q. Was Colin Gonzales given an entrance examination? A. No, he was not.

* * * * *

ROBERT S. REISS, called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

* * * * *

DIRECT EXAMINATION

BY MR. McDONALD:

Q. Mr. Reiss, I want to ask you initially: tell us your full name and tell us where you live. A. My name is Robert Steuart Reiss. I reside at 3322 Prince Charles Court, Falls Church, Virginia.

Q. And you are the husband of Mrs. Reiss, who just testified here? A. Correct.

Q. And you are associated in some capacity with the Fairfax-Brewster School? A. That is correct.

Q. And what is that capacity, please, sir? A. I am the administrative director of the school.

Q. How long have you been with the school? A. Well, I have been associated with it ever since it was founded in '55. About eighteen years.

Q. How is your school maintained financially? A. Our school is maintained financially solely through tuitions paid by parents.

Q. Do you know of your personal knowledge that an application was submitted to your school by the parents of Colin Gonzales sometime in May or June of the year 1969? A. Yes.

Q. And was there a conference held with anyone other than yourself to discuss the merits of the application and as to whether or not it would be accepted? A. Yes.

Q. And who sat in on that conference? A. Well, that year, it happened to be myself, MRS. Reiss and my father, Steuart Reiss.

Q. During this discussion, did you have an opportunity, as the president of this school, to examine the application? A. We discussed the – the application, yes, the applicant.

Q. Do you recall today, looking back, if the application set out on it the school that the boy was in, if he was in a school, this young Colin? A. I believe it was the Crossroads Day Nursery.

Q. Right, sir.

Now, what action was taken after you and your father and your wife discussed this application? A. Well, after we had finally gotten to the application, it was felt we had to deny the applicant.

Q. Well, what was the basic reason for the denial of the application, Mr. Reiss? A. Well, the basic reason for the denial of the application was a lack of educational preparatory background for our first grade situation.

Q. Did you gather from the application the knowledge that he was at Crossroads that he did or did not have sufficient preschool training to admit him (sic)? A. Well, on the basis of the fact that there was no evidence to indicate what he had done in his prior situation with the Crossroads –

Q. I didn't hear that. What was that? A. I say, on the basis of the fact that there was nothing for us to evaluate as far as what he had received in his training situation at Bailey's Crossroads Nursery, we could certainly not make an evaluation of that, and we have – it

would be very unlikely that we would ever allow a child from day-care nursery of this type to come into the first grade and be able to compete and meet success in a fast-paced first grade.

* * * * *

308 CROSS-EXAMINATION

BY MR. BROWN:

* * * * *

309 Q. Would it not be normal, when an application comes in and the child – when it indicates some deficiency, to make some inquiry about it, to talk to the child's parents about it, and that sort of thing? A. You mean if I actually had records to peruse and to investigate?

Q. Yes. A. If I had – if a child came into the school and had records that seemed to be untoward to us or incomplete or questionable, then, under such circumstances, we might pursue it. It would just depend on its own circumstances. I mean, it wouldn't be a blanket statement to that effect.

Q. Well, if a child – the record – your own application form showed a child had attended a particular school but it didn't contain any – there was no other information – no other records that were given – A. Just the fact –

Q. – concerning his background or ability or anything – A. Just the fact that the child had attended X school?

Q. Yes. – what would you do then? What do you

310 do then? A. If we got information that the child had attended X school, we would require, nonetheless, that we

have the information from that school. I want to see the report card; I want to see everything I can get my hands on for every child that comes into Fairfax-Brewster School, because it serves no useful purpsoe to have a child there who is not going to be able to profit from the program.

So if that answers your question –

Q. Well, when an enrollment application is submitted and it doesn't have that information, how do you get it? How do you normally get it? A. You mean if it doesn't come in?

Q. Yes.

You contact the parents and ask them for it? A. I might, yes.

Q. You might? A. Might.

Q. Did you contact the Gonzaleses and ask them for more information about the school their child had gone to? A. No, I don't believe we did.

* * * * *

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314 Q. You have means, do you not, of testing children entering first grade to determine whether they're ready for school? A. Yes.

Q. But you have no such test to Colin? A. No.

* * * * *

324 STEUART A. REISS, called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McDONALD:

* * * * *

325 Q. Tell us, initially, your name and tell us where you live. A. My name is Steuart A. Reiss. I live at 3227 Valley Lane, Falls Church, Virginia.

Q. And for how long have you been a resident of the Virginia area? A. I am a native Washingtonian; have lived in Virginia some thirty-one years.

Q. Thank you, sir.

Now, when was the Fairfax-Brewster School established? In the spring of 1955.

Q. And have you been associated with the school since its inception? A. Ever since.

Q. And what have been your official relations with the school? A. As president in the first two years, then as treasurer and board chairman.

Q. Now, you have been referred to here and outside as "Captain."

* * * * *

326 I ask you, do you recall the circumstances in the matter of the application of a young boy named Colin Gonzales for admission to your school? A. Yes, I do.

Q. Yes.

And when the application came up for decision, who passed on it or who considered it? A. The consideration was made by myself, my daughter-in-law, the registrar, and Mr. Robert Reiss, president of the school and the director of it.

Q. Do you recall about the time that this application was considered, just monthwise, approximately? A. Well, I think it was sometime in May or June and – now, that's four years ago.

327 Q. What year are we talking about? A. '69.

Q. All right, sir.

Now, will you, for the record, tell us the nature of the discussions that were held at that time regarding the application of this young boy for admission? A. The discussion centered on his scholastic qualifications for entry into the first grade.

Q. Do you recall particularly the application with respect to the qualifications that you knew that he had? A. Well, I distinctly remember that his previous attendance to a school, which was really a facility known as Crossroads Day Nursery, a nonqualified school–there was nothing in his application–and this was the discussion that came to this point, and it was very strong around the – that he had nothing in the application which would show any previous training whatsoever, no report card, no evaluation, no record of reading readiness or numbers testing; none of the numerous things that a child should have in qualifying papers for entry into the first grade, particularly for a school who kept the standards we did.

* * * * *

331 Q. Has the policy of your school, since its inception, every been to bar an application for admission for a black child? A. Mr. McDonald, that would be the farthest thing from my mind or the mind of the staff.

The basics of this school are educational qualifications and excellence. That is our own and simple and first requirement of any nature.

Q. You require rather high standards for kindergarten and eligibility for first grade, do you not? A. We do. I believe it's much higher than the public schools and higher than many other private schools.

Q. Now, I hand you a paper that you have given me this morning, and I ask you, by way of identification, tell us what it is and what it reflects. A. It reflects the curriculum in the senior kindergarten of Fairfax-Brewster School, as well as the curriculum in the first grade of Fairfax-Brewster School.

Q. Now, as you look at that, are you aware and are you telling us now of your own knowledge and not what someone else told you that that reflects the curriculum and the requirements of the senior kindergarten for en-
332 trance to your first grade? A. That does.

Q. And does it reflect anything with respect to requirements to first grade? A. It certainly does: science, French –

Q. Just a minute.

MR. McDONALD: You don't have any objection to that?

I'd like to have this appropriately marked, Mr. Clerk, for the defendant.

Your Honor, I know we don't have a jury. May I read this in the record?

THE COURT: Is it admitted in evidence?

MR. McDONALD: Yes.

THE COURT: Any objection?

It will be received in evidence.

(Document entitled "Courses of Study" was marked and received in evidence as Defendants' Exhibit No. 6.)

* * * * *

336 How do the rates of your school compare to other private schools? A Oh, I think they're just competitive. They may be a little higher.

337 Q. I'd like to ask this. I neglected on yesterday to ask your daughter, Mrs. Olga Reiss, a question about her educational background. Are you familiar with her edu-
338 cational background? A. Yes. She has a degree in education.

* * * * *

CROSS-EXAMINATION

BY MR. BROWN:

Q. Mr. Reiss, you have testified to your military background.

What other training and background to you have? What other occupational endeavors have you engaged in? A. What other occupational endeavors?

Q. Yes. A. Other than military?

Q. Yes. A. None.

Q. None.

What kind of education do you have? A. I am a graduate of the United States School of Military Aeronautics. That would be the Air Force Academy as it is today.

339 Q. Do you have any training or schooling in education? A. No, I do not have any training in education.

Q. Does your son? A. Yes, he has.

Q. What is his educational background? A. I believe he has a degree in education; I believe in speech therapy.

Q. From where? A. George Washington University.

Q. And what is your daughter-in-law's degree in? A. Education.

Q. From where? A. George Washington University.

Q. In the general make-up of your school –

now, you have testified that it's been in operation since 1955, correct? A. Correct.

Q. What are the general nature of the families that send their children there; that is, are a good many of them government employees, military families?

What kinds of people send their children there? A. It is a mixture of people in Northern Virginia, because we have only people from Northern Virginia in the school. Those families, as I said, are a normal mixture of the
340 people that you could expect to find here. Many are embassy people from various embassies whose attaches are living in Northern Virginia.

Q. Excuse me for a moment.

Is that what accounts for a good many of the non-Caucasians who are listed in one of your exhibits? A. That would.

Q. All right. Continue, please. A. As well as the military.

Q. Military. A. Military and government. They're not the preponderance, I might say, but they are a substantial number.

Q. What are the preponderance? A. Oh, I actually couldn't give you the answer to that right off. I would have to read the figures over and compute it, but I would say a good section of our students are comprised of military, government – mostly military and government and civilians and some of the children of the embassy – attaches.

Q. Are the people who send their children there people who – many of them have traveled around a good deal, they're transients and they move into Northern Virginia in connection with government or military, and that sort of thing? Not too many of them are native
341 Northern Virginians, are they, would you say? A. Oh,

yes, I would say that probably most of them are natives of Northern Virginia, people who live here and in business. We do have a section comprised of military and, as I said, the government people and children of the attaches of the various embassies.

Q. When a person brings their child to enroll him in the first grade in your school or family, what are the kinds of reqsons they give, generally? What are the general reasons that, say, would cause a family to choose your school as against the public school? A. The general reason is that they – as I believe it has been testified previously, most of our people come from hand – hand-to-mouth – not hand-to-mouth – but from word-of-mouth. People bring their children there because I think they realize it is a quality school and this is what they are looking for – quality education – and that is the reason they come to the school.

* * * * *

345 Q. Well, you have in your literature – are you familiar
346 with this document? A. I am.

Q. Would you state what it is? A. It is the grades of Fairfax-Brewster. That's the title.

Q. And what is the nature of it? Is it a promotional brochure? A. It is a brochure. It is a brochure – descriptive brochure.

* * * * *

347 Q. Would you read the boldprint on the back page here? What does it say? A. "Testing and Evaluation."

Q. Would you read the first sentence? A. "Entrance examinations are required for all new students. Each grade school child –"–

* * * * *

352 MR. McDONALD: I think this is already –
I don't know whether this is in evidence or not.
Is this in evidence – these sheets?
I'd like to then offer as part of our case, Your Honor,
353 a letter from Mr. Brown, bearing date of June 27th, addressed to me, with respect to a proposed stipulation of facts, which I had, previous to that time, proffered to him, in which he agreed to the stipulation of facts that – I am referring here to stipulation 1, 2, 3, 7, 10, 11 and 12. The others we could not agree on and we don't have any agreement on it, but I'd like to show that these – they are rather important. They are mostly pro forma, but I wanted the record to show that that's been stipulated.
THE COURT: Any objection to that?
MR. BROWN: No.
THE COURT: All right, suppose you file that.

* * * * *

354 Now, Your Honor, before I proceed, I want to know exactly what section Mr. Brown is proceeding under so I can cut out a lot of unnecessary testimony.
I understand we are now, purely and simply, down to 1981 and nothing else.
THE COURT: That's my understanding.
MR. BROWN: Yes, Your Honor. I think we might have this understood in the record because originally in our complaint we had stated – asserted 42 U.S.C. 2000(a) as a basis for jurisdiction in the case, but we are abandoning that and rely solely now on 42 U.S.C. section 1981.
THE COURT: That is my understanding of the stipulation with the intervenor, anyway, –
MR. BROWN: That's correct.
THE COURT: – and I assume that stipulation carried

over to Fairfax-Brewster and to Bobbe's School.
MR. McDONALD: Yes, Your Honor.
THE COURT: If it doesn't –
That's your understanding, too, Mr. McDonald?
MR. McDONALD: Yes.
355 MR. KOUTOULAKOS: That's what I understood, but I wanted the record to show that.
THE COURT: All right.
MR. KOUTOULAKOS: Now, the next thing: Is there any question in Mr. Brown's mind that we are purely and totally a private school, with no federal or state funds involved in any way?
I want the record clear on that.
THE COURT: I didn't think there was any issue on that.
MR. BROWN: That's not in issue.
MR. KOUTOULAKOS: That's what I wanted. So the record will show we are purely and totally a private institution.
MR. McDONALD: And that agreement also is with respect to Fairfax-Brewster, too, I assume.
THE COURT: That's the understanding of the Court.

* * * * *

356 WILLIAM C. GATES, called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KOUTOULAKOS:
Q. Mr. Gates, you want to state your full name, please. A. William Charles Gates.
Q. And what is your occupation? A. Superintendent, Bobbe's School.

Q. How long have you been in that capacity? A. Eleven years.

Q. And where is the Bobbe School located? A. 820 South Carlyn Spring Road in Arlington.

Q. Now, quite briefly, so we don't build up the record on items that are not material, what is Bobbe's School? A. Bobbe's School is a development for preschool education, offering for early childhood development, and also
357 extends its program into the first and second grade.

Q. Now, pursuant to a request by the plaintiffs in this case to supply them with your brochures and entrance requirements and other information, you supplied that; is that not correct? A. I supplied brochures and information to anybody who requested it by telephone.

Q. No. I am talking about: you supplied the plaintiffs here and we supplied him and the Court with what is necessary for entrance and what you all require? A. Yes.

Q. Now, you heard the testimony here by a Mr. and Mrs. Gonzales to the effect that sometime in '69 – they are not clear of the month – that a phone call was made to your private school regarding questioning about entrance opportunities for a youngster.

Were you in the school at that time? A. I don't know. When was the time, exactly?

Q. Sometime in '69, whenever it was. A. I possibly could have been. I am in and out of there and also the camp.

Q. Now, did you ever receive such a call from anybody by the name of Gonzales? A. Never.

358 Q. Now, is the policy of the school to exclude black children per se just on the basis of race? A. No, I can't say so.

Q. How is an applicant's qualifications and entrance

for qualification determined, Mr. Gates? A. Well, after they have taken out their application and come back to the school, we go over the particular program the child's going to get into and then we make a placement for starting if we have a particular opening in our classroom, after verification of the application that's submitted along with the health certificate and the registration fee.

Q. Now, before I pass on, you heard Mrs. McCrary, the lady that testified yesterday regarding a phone call she made.

Did you ever receive such a phone call from any person by the name of McCrary at any time? A. Not to my knowledge, I have never –

Q. Have you ever been told, or have you ever told anybody, that your school is not integrated? A. No, because we are. We have various children, from all nationalities.

Q. Well, tell His Honor or state for the record just what various types of reaces have been included and accepted in
359 your school. A. Well, we have had Arabic; we have had French; we have had Spanish; we have had Rissian children.

Q. Do you have any Greeks in there? A. Yes, we probably have, too. We have just about all nationalities in the school.

Q. Now, in order for a youngster to be considered, what are the steps that have to be taken, regardless of race? A. Well, as I stated just a few minutes ago, a person either calls or comes by the school and applies for an application. They pick up their application. At that time, if we can talk about the interview, we will. If not, we will set a definite time up, convenient to class schedules, because the students or parents, or both of us, will want to visit the class to make observation, to see whether the child is particularly ready for the class we are going to

put the child into. After this, if we have an opening in the particular class the child is going to, whether it be in the nursery development, kindergarten or first or second grade, then we place up a starting date according to the cancellation times we have from students leaving. After they have done this, they complete their application, their registration fee, their doctor's certificate, and we submit the child to the classroom.

Q. Can any youngster ever be considered without first
360 going through the formal filling out routine and the medical certificate and the personal interview and the rest of the requirements that your brochure sets out?

Would any youngster every be considered without going through that process? A. I don't see how they could be because, first of all, Fairfax County requires a health certificate for a child to enter school, which is one of the reasons why we have to have a health certificate to come in. The other step would be to fill out the application for placement and then the child would have to come into shcool and to see and observe the child in the classroom.

Q. Has any black child ever been denied consideration purely on the basis of race? A. We never had a black child apply to the school.

Q. Assuming a black child does apply, would they be denied any consideration purely on the fact that he's black? A. No, I don't see why they should be.

Q. Would he be considered on the same basis as any youngster? A. Any race that came in there.

Q. Whether it be Caucasian or Oriental? A. That is correct.

Q. Then are you saying the determination of admis-
361 misability is determined by the same requirements? Is that correct? A. That's correct. We are selective

of the students that come into the school.

Q. Had you ever heard or known of Mrs. McCrary prior to this lawsuit, Mr. Gates? A. No, I have not.

Q. How about Mr. or Mrs. Gonzales? A. No, I have not.

Q. As a matter of fact, didn't it come to your attention that Mrs. McCrary worked at an establishment that was almost next door to your school? A. Yes, it did.

Q. She worked right next to it, didn't she, – A. That's right.

Q. – in a Navy building?

So she was, from what you could gain, very familiar with what took place in that school; is that not correct? A. I would say she was, if she was that close to the school.

Q. And she left, as far as you know, that Navy job, or whatever it was, prior to her getting this equal opportunity job she's talking about? A. That I'm not sure.

362 Q. Do you every accept any children purely on the basis of a phone call? A. We do not. It's not a policy of the school.

Q. And that's regardless of race, right? A. Regardless of anything.

Q. The record speaks for itself, but is there any place in any of your forms that are required to be filled out that has any question regarding what race a party might be? A. No, we do not.

Q. It's blank of any race? A. We don't have it on the application.

Q. And it is your testimony that the only basis that you have for entrance is purely a selective basis based on whatever criteria you set out, independent of race?

A. This is correct. Right.

MR. KOUTOULAKOS: He is your witness.

CROSS-EXAMINATION

BY MR. BROWN:

Q. Do people call your school from time to time and ask for information about the school, without giving their names? A. This is correct.

Q. Is it possible that Mr. Gonzales or Mrs. McCrary
363 called and asked for information about the school without giving their name? A. It's possible anybody could.

* * * * *

MR. KOUTOULAKOS: Your Honor, the next witness will be Mrs. Runyon, who will be exactly corroborative, and she will testify further, if he is willing to stipulate, that she never received a phone call. The only other person that has any authority at all in the acceptance area would be Mrs. Runyon. She would testify exactly in the same vein as Mr. Gates; and if he is willing to stipulate, fine. If not –

THE COURT: Will Mr. Brown stipulate that if Mrs. Runyon were called to testify, that she would corroborate the witness who has just testified?

MR. BROWN: Yes.

MR. KOUTOULAKOS: And would further say that, in the absence of Mr. Gates, Mrs. Runyon would be taking the calls and that Mrs. McCrary never called, to her knowledge, and neither did Mrs. Rodriguez or Mr. Gonzales or Mrs. Gonzales.

* * * * *

372 MARSHALL BROOKES, called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. Will you state your name and address, please.

A. My name is Marshall Brookes, and my working address is the Naval Air Systems Command Headquarters in
373 Arlington, Virginia, my home address being Baltimore, Maryland.

Q. What is your occupation and what do you do at the Naval Air Systems Command? A. Well, my occupation is that of deputy equal employment opportunity officer with the Naval Air Systems Command; also, I have another title: the domestic action program coordinator, and basically my function is to insure that for 1800 people in Washington and for about 50,000 throughout the country that we practice the provisions of equal opportunity as defined by the Civil Service Commission and the Department of Navy.

Q. What is your educational background, Mr. Brookes?

A. Well, I am a graduate of Morgan College in Baltimore.

Q. With what kind of a degree? A. A degree in sociology; Bachelor of Arts degree in sociology.

Q. Do you know the plaintiff in this case: Mrs. McCrary? A. Yes, I do.

Q. In what connection? A. Well, MRS. McCrary is an employee of mine.

374 Q. She is an employee of yours? A. Yes.

Q. And how does her job relate to yours; that is, does she do the same kind of work that you do or –

A. Well, basic –

MR. KOUTOULAKOS: I don't want to cut you off. This isn't rebutting anything. If he will get to the rebuttal, we will finish the case. He is just corroborating she works there. We don't fuss with that.

THE COURT: I think you better get to the rebuttal.

MR. BROWN: I will.

Scratch that or strike the last question, then.

BY MR. BROWN:

Q. Had you discussed this pending lawsuit, in which Mrs. McCrary is a plaintiff, with her? A. Yes.

Q. And did there come a time when you were concerned about the lawsuit and took some action with respect thereto? A. Yes.

Q. What did you do? And explain why. A. Well, basically, with the amount of publicity there, I was
375 concerned mainly from the point of view that part of our headquarters is located adjacent to the Bobbe Day-Care Center and part of our policy with the federal government is that we provide day-care centers for our working mothers, and with the Chief of Naval Material Command, which we come under, we are to actively try to promote day-care centers; and where there are none, we are to make available lists to our employees places where they will be eligible and will be allowed to take their children.

Q. Did you ever place a phone call to Bobbe's Private School? A. Yes, I did.

Q. When? A. On May 31st.

Q. Of what year? A. May 31, 1973.

Q. Do you know who you spoke to? A. Yes.

Q. What was the person's name? A. A Mr. Gates.

Q. Did he identify his relationship with the school?

A. Well, I don't know the exact words, but when the

operator answered the phone, I asked to speak to the headman, superintendent, or something. He's identified
376 as the superintendent.

Q. Will you relate what happened in the phone call; what you said to him and what he said to you? A. Right. I identified myself: I was Marshall Brookes with the federal government, and we were looking for the various day-care centers in the Washington area.

We have various people coming in, both – well, we have people coming into the Washington area to reside, and we were trying to know the various day-care centers that we could have as a list for our people.

Q. And – A. Well, –

Q. Proceed. A. – to continue, I mentioned that there were two questions I would raise. One would be whether the center was accredited by the municipality of Virginia; and, secondly: Was it integrated?

And I went a step further to state the "Many of our people are black. And so, therefore, is the day-care center integrated?" And I was informed that it was not. And I raised the question that, "Are you planning on integrating any time soon?" And the answer was to the negative, that they did not intend to integrate.

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396 You heard Mr. Brookes' testimony about calling, and he said he talked to you.

Do you recollect any such conversation? A. I don't recollect a gentleman by the name of Mr. Brookes calling me, but a gentleman did call me and we discussed things of this nature.

Q. Now, was there any discussion at all as to whether or not you were integrated? A. Well, as I recall correctly, the question arose, "Are you integrated? Do you have any blacks?"

Q. And what did you answer to that? A. I'd have to answer "no," because we didn't at that time.

Q. Meaning what? You didn't – A. Meaning we didn't have blacks in the school.

Q. You didn't answer the question whether you were integrated or you didn't accept blacks? A. That's correct, because we are integrated.

Q. Is your answer the same as to a black application? Would that be accepted? A. It would be accepted if the person went through the normal procedures as any other person.

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